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Keserovic v. State Clerk's Record Dckt. 41890

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IN THE SUPREME COURT OF THE STATE OF IDAHO

HARIS KESEROVIC,

Petitioner-Respondent,

vs.

STATE OF IDAHO,

Respondent-Appellant.

Supreme Court Case No. 41890

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MICHAEL MCLAUGHLIN

SHAWNA DUNN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

KIMBERLY SIMMONS

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Haris Keserovic, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
9/26/2012	NCPC	CCKHAMSA	New Case Filed - Post Conviction Relief	Magistrate Court Clerk
	PETN	CCKHAMSA	Petition For Post-Conviction Relief	Theresa Gardunia
	CERT	CCKHAMSA	Certificate Of Mailing	Theresa Gardunia
10/12/2012	HRSC	TCMILLSA	Hearing Scheduled (Pretrial Conference 11/20/2012 08:30 AM)	Theresa Gardunia
10/25/2012	ANSW	CCHEATJL	Answer (Shawna Dunn For State Of Idaho)	Theresa Gardunia
	MOTN	CCHEATJL	Motion For Summary Judgment	Theresa Gardunia
11/5/2012	OPPO	CCMEYEAR	Petitioner's Opposition to Respondent's Motion for Summary Disposition	Theresa Gardunia
11/20/2012	PROS	PRGUTIEN	Prosecutor assigned Shawna Dunn	Theresa Gardunia
	HRHD	TCMILLSA	Hearing result for Pretrial Conference scheduled on 11/20/2012 08:30 AM: Hearing Held	Theresa Gardunia
	HRSC	TCMILLSA	Hearing Scheduled (Status 12/13/2012 11:00 AM)	Theresa Gardunia
	HRSC	TCMILLSA	Hearing Scheduled (Motion 01/14/2013 03:00 PM)	Theresa Gardunia
		TCMILLSA	Notice Of Hearing	Theresa Gardunia
12/18/2012	MOTN	CCVIDASL	Motion for Waiver of Attorney Client Privelege	Theresa Gardunia
12/28/2012	HRHD	TCMILLSA	Hearing result for Status scheduled on 12/13/2012 11:00 AM: Hearing Held	Theresa Gardunia
1/28/2013	ORDR	TCCAMPAM	Order Granting Summary Dismissal of Post Conviction Motion Relief	Theresa Gardunia
2/12/2013	BREF	CCPINKCN	Brief in Support of Motion Requesting Entry of a Final Judgment of Dismissal	Theresa Gardunia
2/22/2013	JDMT	TCCAMPAM	Judgment of Dismissal	Theresa Gardunia
	CDIS	TCCAMPAM	Civil Disposition entered for: State Of Idaho, Other Party; Keserovic, Haris, Subject. Filing date: 2/22/2013	Theresa Gardunia
	STAT	TCCAMPAM	STATUS CHANGED: Closed pending clerk action	Theresa Gardunia
3/11/2013	APSC	CCHOLMEE	Appealed To The Supreme Court	Theresa Gardunia
	NOTA	TCWEGEKE	NOTICE OF APPEAL	Theresa Gardunia
3/21/2013	APDC	CCTHIEBJ	Appeal Filed In District Court	Theresa Gardunia
	CAAP	CCNELSRF	Case Appealed:	Theresa Gardunia
	STAT	CCNELSRF	STATUS CHANGED: Reopened	Theresa Gardunia
3/22/2013	CHGA	CCNELSRF	Judge Change: Administrative	Michael McLaughlin
		CCNELSRF	Notice of Reassignment	Michael McLaughlin
	MISC	TCWEGEKE	Estimated Cost of Appeal Transcript	Michael McLaughlin
4/2/2013	HRSC	TCLYCAAM	Hearing Scheduled (Oral Argument on Appeal 08/07/2013 02:00 PM)	Michael McLaughlin
	ORDR	TCLYCAAM	Order Governing Procedure On Appeal	Michael McLaughlin

Haris Keserovic, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
4/2/2013	NPET	TCPAANMR	Notice Of Paymnt Of Estimated Cost Of Appeal Transcript
5/9/2013	NOTC	CCWATSCL	Notice of Lodging of Appeal Transcript
	LODG	CCWATSCL	Transcript Lodged
5/29/2013	MOTN	CCOSBODK	Motion To Withdrawal Appellants Attorney, Appoint The Ada County Public Defender And For Extension Of Time To File Appellants Brief
	AFSM	CCOSBODK	Affidavit In Support Of Motion
	AFSM	CCOSBODK	Affidavit In Support Of Motion
5/30/2013	CESV	CCSCOTDL	Certificate Of Service
6/3/2013	HRSC	CCAMESLC	Notice of Hearing (Motion 06/26/2013 04:00 PM)
6/6/2013		TCWEATJB	Amended Notice Of Hearing (certificate of service to correct parties)
6/7/2013	NOTC	TCLYCAAM	Notice of Filing Transcript
6/12/2013	CERS	CCPINKCN	Certificate Of Service
	MOTN	CCPINKCN	Motion to Reset Hearing Date
6/25/2013	AFFD	CCNELSRF	Financial Affidavit of Harris Keserovic
	AFFD	CCNELSRF	Second Affidavit of A. Denise Penton in Support of Motion
6/26/2013	AFFD	MCBIEHKJ	Affidavit in Support of Motion to Wlthdraw as Attorney and Motioin to Appoint Public Defender
	DCHH	DCJOHNSI	Hearing result for Motion scheduled on 06/26/2013 04:00 PM: District Court Hearing Held Court Reporter: tardiff Number of Transcript Pages for this hearing estimated:50
	HRVC	DCJOHNSI	Hearing result for Oral Argument on Appeal scheduled on 08/07/2013 02:00 PM: Hearing Vacated
	HRSC	DCJOHNSI	Hearing Scheduled (Status 08/14/2013 04:00 PM)
7/26/2013	ORDR	TCLYCAAM	Order to Continue
7/30/2013	HRVC	TCLYCAAM	Hearing result for Status scheduled on 08/14/2013 04:00 PM: Hearing Vacated
	HRSC	TCLYCAAM	Hearing Scheduled (Motion 08/21/2013 02:30 PM)
8/6/2013	AFFD	CCPINKCN	Financial Affidavit of Haris Keserovic
8/21/2013	ORPD	TCLYCAAM	Subject: Keserovic, Haris Order Appointing Public Defender Public defender Ada County Public Defender
		TCLYCAAM	Order Appointing Public Defender

Haris Keserovic, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
8/21/2013	DCHH	TCLYCAAM	Hearing result for Motion scheduled on 08/21/2013 02:30 PM: District Court Hearing Held Court Reporter: Susan Gambiae Number of Transcript Pages for this hearing estimated: Less than 50
8/23/2013	ORDR	TCLYCAAM	Order Governing Procedure on Appeal
	HRSC	TCLYCAAM	Hearing Scheduled (Oral Argument on Appeal 01/09/2014 04:00 PM)
9/12/2013	ORDR	CCMEYEAR	Order Allowing Withdrawal of Attorney (Andrade)
10/15/2013	BREF	CCHEATJL	Appellant's Brief
11/13/2013	BREF	CCHEATJL	Respondent's Brief
1/9/2014	DCHH	TCEDWAAM	Hearing result for Oral Argument on Appeal scheduled on 01/09/2014 04:00 PM: District Court Hearing Held Court Reporter: Sue Wolfe Number of Transcript Pages for this hearing estimated: Less than 100
1/14/2014	MEMO	TCEDWAAM	Memorandum Decision and Order
2/24/2014	APSC	CCTHIEBJ	Appealed To The Supreme Court
	NOTA	CCTHIEBJ	NOTICE OF APPEAL
3/6/2014	NOTA	CCTHIEBJ	AMENDED NOTICE OF APPEAL
4/21/2014	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 41890

SEP 26 2012

CHRISTOPHER D. RICH, Clerk
By SAYTHARA KHAM-ONE
DEPUTY

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SEP 26 2012
Ada County Clerk

THERESA L. GARDUNIA

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Haris KESEROVIC,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent,)
_____)

CASE NO. **CV PC 1217517**

**PETITION FOR POST-
CONVICTION RELIEF**

I. GENERAL ALLEGATIONS

1. Haris Keserovic (hereinafter Mr. Keserovic) has been lawfully residing in the United States since 1998. He is a native and citizen of Bosnia-Herzegovina. Mr. Keserovic fled Bosnia as a refugee in the wake of the Bosnian War. He was admitted to the United States as a youth and subsequently adjusted his status to that of green card holder or Lawful Permanent Resident ("LPR"). He remains an LPR to this day.
2. Mr. Keserovic is the father of a four-year old U.S. citizen son. His parents reside lawfully in the United States, as do his two younger brothers. In addition, Mr. Keserovic's aunt and numerous cousins live in the United States.

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3. On or about January 6, 2012, Mr. Keserovic was arrested in Ada County for the crime of theft. The original charge was Grand Theft in violation of I.C. § 18-2407(1). The charge was subsequently amended to misdemeanor Petit Theft in violation of I.C. § 18-2407(2). The Ada County District Court number for that case is CR-FE-2012-0000311 ("the theft case").
4. Mr. Keserovic was represented in the theft case by Jeffrey McKinnie whose law offices are located in Boise, Idaho.
5. According to Mr. Keserovic's sworn affidavit that is being submitted with this Petition, Mr. McKinnie discussed immigration consequences with Mr. Keserovic on more than one occasion. Mr. Keserovic describes being visited by an immigration officer while in jail. Mr. Keserovic told Mr. McKinnie that the immigration officer told him that he would be deported if he was convicted of a felony. Mr. McKinnie then repeated to Mr. Keserovic, "So, the immigration agent told you that you would get deported if you got a felony?" Mr. Keserovic confirmed that this is what the agent told him. Subsequently, Mr. Keserovic swears, Mr. McKinnie advised Mr. Keserovic to plead guilty to misdemeanor petit theft. He told Mr. Keserovic that he "wouldn't have any problems with immigration and that within sixty (60) days [he] would have [his] life back on track."
6. Mr. Keserovic, on the advice of counsel, entered into a written plea agreement that was filed with Ada County Court on June 26, 2012. The Rule 11 Plea Agreement indicates that the defendant will plead guilty to

- petit theft. It further provides that the stipulated sentence is "365/305; 60 days to serve w/ work release if available." The stipulated sentence goes on to specify a probationary period, fines and court costs.
7. On June 26, 2012, Mr. Keserovic was convicted of Petit Theft, a misdemeanor in violation of Idaho Code § 18-2407(2) by guilty plea.
 8. On June 26, 2012, the Ada County District Court entered a judgment of conviction and probation order in the theft case. The Ada County District Court sentenced Mr. Keserovic to 365 days of imprisonment with 305 days suspended. Mr. Keserovic received credit for time served in the amount of 5 days. Mr. Keserovic was placed on supervised probation until September 10, 2014. Finally, Mr. Keserovic was ordered to pay restitution and court costs.
 9. At the plea colloquy and sentencing hearing, the prosecutor indicated that pleading guilty to the amended charge subjected Mr. Keserovic to potential deportation.
 10. At the plea colloquy and sentencing hearing, the presiding judge indicated that the conviction could impact any naturalization application Mr. Keserovic may file as well as his ability to work in the United States.
 11. According to his sworn affidavit, Mr. Keserovic recalls the court and the prosecutor saying that pleading guilty to petit theft might have immigration consequences. Mr. Keserovic recalls turning to his counsel

for advice or confirmation. Mr. Keserovic states that his counsel placated his fears.

12. On or about September 10, 2012, Immigration and Customs Enforcement (ICE) assumed custody of Mr. Keserovic.

13. Mr. Keserovic is currently detained by ICE at the Elmore County Jail in Mountain Home, Idaho. Upon information and belief, Mr. Keserovic is slated to be transferred to a long-term immigration detention facility in Salt Lake City, Utah on September 20, 2012.

14. No direct appeal was filed in the theft case.

15. With respect to this conviction, or the sentence, Mr. Keserovic has not filed any motion for sentence reduction or other petition for post-conviction relief.

16. Mr. Keserovic has been held in the custody of ICE since September 10, 2012 and has not been afforded the opportunity to seek release from custody upon payment of a bond precisely because he was convicted of a crime the immigration laws define as an aggravated felony. 8 U.S.C. § 1101(a)(43)(G). Conviction for an aggravated felony subjects non-citizens like Mr. Keserovic to mandatory detention. 8 U.S.C. § 1226(c)(1)(B).

II. CAUSE OF ACTION: Mr. Keserovic was denied the effective assistance of counsel in violation of the sixth amendment right to counsel under *Padilla v. Kentucky* due to Mr. McKinnie's affirmative misadvice to Mr. Keserovic about the immigration consequences of his guilty plea, causing him prejudice.

17. The allegations in paragraphs 1 through 16 are repeated and realleged as if fully set forth herein.

18. Mr. Keserovic's counsel, Mr. McKinnie, was aware that Mr. Keserovic was not a United States Citizen, though he was not aware of Mr. Keserovic's precise immigration status.

19. Mr. McKinnie did not tell Mr. Keserovic that a conviction for a theft offense with a 365 day sentence was an aggravated felony under immigration law or otherwise communicate that the conviction would cause him to lose his Lawful Permanent Resident status.

20. In fact, Mr. McKinnie affirmatively misadvised Mr. Keserovic that he "wouldn't have any problems with immigration" if he pled guilty to the amended charge. Mr. McKinnie admits that he told Mr. Keserovic that his crime was not an "aggravated felony" because it was a state law misdemeanor.

21. Mr. McKinnie's performance as counsel was deficient within the meaning of *Padilla v. Kentucky* because the consequence of pleading guilty to theft with a 365 day sentence is virtually certain deportation. *Id.*, 130 S. Ct. 1473 (2010). As in *Padilla*, a simple reading of the Immigration and Nationality Act would have revealed that virtually certain deportation was the clear

consequence of pleading guilty to theft with a 365 day sentence. *Padilla*, at 1483; *see also* 8 U.S.C. § 1101(a)(43)(G) (identifying theft with a one year sentence as an “aggravated felony”); 8 U.S.C. § 1227(a)(2)(A)(iii) (rendering deportable “any alien who is convicted of an aggravated felony....”); 8 U.S.C. § 1182(a)(9)(A)(ii) (flush language) (alien inadmissible at any time if convicted of an aggravated felony).

22. Had Mr. Keserovic understood that his conviction for petit theft with a 365 day sentence would lead to virtually certain deportation and permanent inadmissibility from the United States, he would have exercised his right to a jury trial or he would have sought a one-day sentence reduction to take his offense outside of the ambit of an “aggravated felony.” Given all that was at stake for Mr. Keserovic, it would have been rational to have rejected any deal in which he pled guilty to theft with a 365 day sentence.

III. DOCUMENTS INCORPORATED BY REFERENCE

The following included documents are incorporated by reference:

1. Affidavit of Jeffrey McKinnie.
2. Affidavit of Haris Keserovic.

IV. ARGUMENT

A. General principles of Idaho law: Post-conviction relief based on ineffective assistance of counsel.

A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 917, 924-25, 828 P.2d 1323, 1329-30 (Ct.App.1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient, and that the defendant was prejudiced by the deficiency. *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Russell*, 118 Idaho at 67, 794 P.2d at 656; *Davis v. State*, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct.App.1989). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Russell*, 118 Idaho at 67, 794 P.2d at 656. To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Aragon*, 114 Idaho at 761, 760 P.2d at 1177; *Russell*, 118 Idaho at 67, 794 P.2d at 656.

For the reasons set forth below, Mr. Keserovic merits post-conviction.

B. By providing incorrect advice to Mr. Keserovic about the immigration consequences of pleading guilty to theft with a 365 day sentence, Mr. McKinnie provided ineffective assistance of counsel under *Padilla v. Kentucky*.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to...have the Assistance

of Counsel for his defense." U.S. Const. amend. VI. Before deciding whether to plead guilty, a defendant is entitled to "the effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Strickland v. Washington*, 466 U.S. 668, 686 (1984). In the case of *Padilla v. Kentucky*, the United States Supreme Court held that effective representation under the Sixth Amendment includes counseling a non-citizen defendant about the immigration consequences of a conviction. *Id.*, 130 S. Ct. 1473 (2010). In reaching that conclusion, the *Padilla* Court examined prevailing professional norms from around the country. *Padilla*, at 1485. The Court concluded that, "for at least the past 15 years," the weight of those professional norms imposed an obligation on counsel to provide noncitizen criminal clients with advice about immigration consequences. *Id.* at 1485. Furthermore, the Court recognized that "deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." *Id.* at 1480. In fact, it noted that deportation had long been recognized as a particularly severe penalty. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (recognizing that "deportation may result in the loss of all that makes life worth living") (internal citation omitted).

In *Padilla*, the defense attorney incorrectly informed his LPR client that his conviction for a drug offense would not jeopardize his immigration status "since he had been in the country for so long." *Padilla*, at 1478. In fact, Mr. Padilla's conviction was an aggravated felony drug offense that made Mr. Padilla's

deportation virtually mandatory. *Padilla*, at 1478. The Court observed that under these facts, the attorney's deficient performance is clear:

This is not a hard case in which to find deficiency: the consequences of Padilla's plea could easily be determined from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect.

Padilla, 130 S. Ct. at 1483.

The Supreme Court held that Mr. Padilla's attorney's failure to correctly advise Mr. Padilla that his conviction virtually guaranteed his removal constituted ineffective assistance of counsel under *Strickland v. Washington*.

Padilla, 130 S. Ct. at 1481, citing *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

The *Padilla* Court puts its core prescription simply and directly: "when the deportation consequence is truly clear,...[defense counsel's] duty to give correct advice is equally clear." *Padilla*, at 1483. The Court distinguished those scenarios where the crime's immigration consequence is "truly clear" from those where the consequences are foggy: "When the law is not succinct and straightforward..., a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences." *Id.*

Mr. Keserovic's case was one in which the consequences were clear as day and so his lawyer, Mr. McKinnie, had a duty under *Padilla* to give correct advice. All Mr. McKinnie needed to do to understand just what accepting a guilty plea to theft with a 365 day sentence meant from an immigration standpoint was open

the Immigration and Nationality Act. Had he done so, he would have found, just like Mr. Padilla's lawyer, that the crime he pled his client to is an aggravated felony, 8 U.S.C. § 1101(a)(43)(G). Section 1101(a)(43)(G) of title 8 of the U.S. Code provides that the "term aggravated felony means...a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year [*sic.*]...." (emphasis added). Further, the immigration laws make clear that suspended sentences are considered part of the "term of imprisonment." 8 U.S.C. § 1101(a)(48)(B). No further research would have been necessary to conclude that theft with a 365 day sentence was an "aggravated felony" under the immigration laws.

While it might seem counter-intuitive that a state misdemeanor can turn into an "aggravated felony" in the immigration context, that is exactly what the law holds. Both the Ninth Circuit Court of Appeals and the Board of Immigration Appeals – the agency appellate tribunal tasked with interpreting the immigration laws -- have held that a state misdemeanor can nevertheless qualify as an aggravated felony for immigration purposes. *United States v. Gonzalez-Tamariz*, 310 F.3d 1168 (9th Cir. 2002) (Nevada conviction of battery causing substantial bodily harm constituted an aggravated felony under 8 U.S.C. § 1101(a)(43)(F), regardless of its state law label as a misdemeanor with one-year maximum possible sentence); *see also Matter of Small*, 23 I&N Dec. 448 (BIA 2002) (*en banc*) (misdemeanor conviction of sexual abuse of a minor with a sentence of one year in custody constitutes an aggravated felony under 8 U.S.C. § 1101(a)(43)(F)). For

a Lawful Permanent Resident, like Mr. Keserovic, an “Aggravated Felony” conviction carries the following consequences: it subjects him to mandatory detention¹; it makes him automatically deportable²; it eliminates an Immigration Judge’s ability to grant him any form of discretionary relief from removal³; and renders him permanently inadmissible to the United States.⁴

Under *Padilla*, Mr. McKinnie was required to inform Mr. Keserovic of not only the risk of deportation, but the virtual certainty that his conviction would cause his deportation. This, by his own admissions, Mr. McKinnie did not do. See Affidavit of Jeffrey McKinnie. In fact, Mr. McKinnie provided affirmative misadvice about the consequences of pleading guilty to theft with a 365 day sentence. Mr. Keserovic describes how Mr. McKinnie twice pacified his client’s concerns that he would be deported depending on the outcome of the case.

¹ See 8 USC § 1226(c)(1)(B). Mr. Keserovic has been detained by ICE since he was released from criminal custody on or about September 10, 2012.

² See 8 USC § 1227(a)(2)(A)(iii).

³ See 8 USC § 1229b(a), which provides:

Cancellation of removal for certain permanent residents. — The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien —

- (1) has been an alien lawfully admitted for permanent residence for not less than 5 years,
- (2) has resided in the United States continuously for 7 years after having been admitted in any status, and
- (3) *has not been convicted of any aggravated felony.*

8 USC § 1229b(a)(emphasis added). Cancellation of removal is the most common form of relief for a long term Lawful Permanent Resident like Mr. Keserovic. However, because his conviction for petit theft was coupled with a 365 day sentence, it constitutes an Aggravated Felony under the INA and therefore disqualifies him from even asking for cancellation of removal for lawful permanent residents.

⁴ 8 U.S.C. § 1182(a)(9)(A)(ii) (flush language) (alien inadmissible at any time if convicted of an aggravated felony).

For the foregoing reasons, Mr. McKinnie provided ineffective assistance of counsel to Mr. Keserovic under *Padilla*.

C. Mr. Keserovic was prejudiced by Mr. McKinnie's ineffective assistance because there is a reasonable probability that, but for the misadvice, the result of the proceeding would have been different.

Mr. Keserovic came to the United States lawfully as a boy and has lived here since. This country is not only the sole home he knows, it is also his safe haven. Moreover, he is the father of a four year old U.S. citizen child. Had Mr. Keserovic known that he would be banished from the United States for the rest of his life, it is more than probable that he would have sought different means to resolve his case or risked conviction at trial. It would have been rational for him to reject the plea deal he ultimately accepted. Indeed, this he says himself, unequivocally:

"There is no question that I would not admit guilt to the crime if I had known that this conviction would require my deportation. If I were able to do it again, I would not admit guilty [*sic.*] to theft and would take this case to trial." See

Affidavit of Haris Keserovic. Mr. Keserovic was so concerned with the immigration consequences that he raised the issue with Mr. McKinnie after Mr. Keserovic had been visited in jail by an immigration officer. *Id.*

Alternatively, had Mr. McKinnie correctly advised Mr. Keserovic, it is probable that Mr. Keserovic could have negotiated a deal in which he pled to the same offense but to a 364 day sentence, rather than a 365 day sentence. Such a sentence would have taken the crime outside of the "aggravated felony" definition. INA § 101(a)(43)(G). It is probable that the state of Idaho would have

agreed to a 364-day sentence, given the fact that the state agreed to amend the charge from a felony to a misdemeanor and agreed to a suspension of nearly all of the time to which Mr. Keserovic was sentenced. Clearly, the State was not interested in Mr. Keserovic's prolonged incarceration.

Furthermore, it is probable that the Court would have entered such a sentence, had it been presented to the Court as the product of a binding Rule 11 Plea Agreement between the parties.

For the foregoing reasons, Mr. Keserovic suffered prejudice on account of Mr. McKinnie's deficient performance.

D. *Padilla* makes plain that the non-citizen defendant's right to be informed of clear immigration consequences derives from the Sixth Amendment's right to counsel, and so it is irrelevant that the court or the prosecutor may have alerted Mr. Keserovic - at the sentencing hearing - to the consequences of a guilty plea.

The state should not be heard to argue that Mr. Keserovic's petition should fail because he may have been alerted by the state or the court at the sentencing hearing to the immigration consequences of his guilty plea. Such an argument would be meritless for several reasons.

In *Padilla*, the Supreme Court repeatedly stated that the obligation to provide accurate advice regarding immigration consequences falls on *defense counsel*. *Padilla*, at 1482, 1486. Statements from the court or the prosecutor regarding possible immigration consequences can play a useful role in stimulating a conversation regarding immigration consequences between the defendant and his attorney, but they cannot substitute for competent advice

regarding the advisability of the guilty plea in light of the immigration consequences, as required by the Sixth Amendment pursuant to *Padilla*. See *In re Resendiz*, 25 Cal.4th 230, 240-42 (2001) (that a defendant may have received valid advisements [regarding immigration consequences] from the court does not entail that he has received effective assistance of counsel in evaluating or responding to such advisements."); *State v. Paredes*, 136 N.M. 533, 537-38 (2004) (defense attorney "is in a much better position [than the court] to ascertain the personal circumstances of his...client so as to determine what indirect consequences the guilty plea may trigger"). The Washington Supreme Court noted that the *Padilla* decision, in highlighting court notification requirements, was "underscore[ing] 'how critical it is for *counsel* to inform her noncitizen client that he faces a risk of deportation.'" *State v. Sandoval*, 249 P.3d 1015, 1020-21 (Wash. 2011) (emphasis in original) (quoting *Padilla*, at 1486). Therefore, as the reasoning of the *Padilla* decision would be undercut by allowing court or prosecutor notifications to replace competent attorney advice, this Court should hold that a court or prosecutor notification is not an acceptable substitute for the competent advice required under the Sixth Amendment regarding the advisability of entering the guilty plea in light of the immigration consequences.

Statements by the court or the prosecutor cannot cure the prejudice flowing from a Sixth Amendment violation pursuant to *Padilla* for several reasons.

First, the defendant is entitled to rely on his attorney's advice regarding the advisability of entering the guilty plea, as opposed to the court or the prosecutor's statements regarding possible immigration consequences, which is given without knowledge of the defendant's unique circumstances. Attorney competence is presumed under the Sixth Amendment. *See Strickland v. Washington*, 466 U.S. 668, 689 (1984) (courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance"). Therefore, the defendant can also presume that his attorney, who is familiar with the details of his particular situation, has provided competent advice. *See State v. Yahya*, 2011 WL 5868794 *5 (Ohio App. 10 Dist.) (despite court's statement that defendant might get deported, it "might have been reasonable for appellant to rely on her attorney's specific assurance that she would not be deported"); *accord Ex Parte Saldana*, 2010 WL 2789032 (Tex. App.-Austin). This is well-illustrated in the instant case, where Mr. McKinnie told a concerned Mr. Keserovic that he would not be deported because his crime was a misdemeanor. While Mr. McKinnie's statement that Idaho petit theft is a misdemeanor was correct, he was absolutely incorrect in stating that the crime was not an aggravated felony under the immigration laws. However, his statement to Mr. Keserovic that Idaho petit theft was not an aggravated felony had the hallmark of validity for Mr. Keserovic because it came from counsel. Therefore, it was reasonable for Mr. Keserovic to rely on his attorney's erroneous advice as opposed to the court and the prosecutor's general statement, given

without knowledge of the defendant's individual circumstances, which mentions the possibility of a "negative effect" on immigration status.

Second, the court and the prosecutor's obligations under the Fifth Amendment are legally and practically distinct from counsel's responsibilities under the Sixth Amendment, and these distinctions render information provided during the plea colloquy and sentencing hearing an insufficient substitute for competent advice from the defense attorney given before the defendant decides to plead guilty. In *Powell v. Alabama*, the Supreme Court put it thusly:

[H]ow can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.

287 U.S. 45, 61 (1932). This cogent description of the distinct responsibilities of the judge (and, to some extent, the prosecutor) as opposed to the defense attorney continues to reflect the functional division embodied in our constitutional jurisprudence, and mandates the conclusion that a court or prosecutorial notification regarding immigration consequences cannot substitute for meaningful advice from the defense attorney given before the defendant decides to enter a guilty plea.

Third, a statement by a court or prosecutor that deportation is a "potential" consequence of a guilty plea does not put a defendant whose deportation is virtually certain on notice regarding the inevitability of

deportation. *Padilla*, at 1483 (“when the deportation consequence is truly clear,...the duty to give correct advice is equally clear.”); accord *U.S. v. Bonilla*, 637 F.3d 980, 984 (9th Cir. 2011) (“A criminal defendant who faces almost certain deportation is entitled to know more than that it is *possible* that a guilty plea could lead to removal; he is entitled to know that it is a virtual certainty.”); see also *State v. Sandoval*, 249 P.3d 1015 (Wash. 2011) (granting post-conviction relief and finding prejudice where defendant had signed a plea agreement containing warning about immigration consequences); *Salazar v. State*, No. 11-11-00029-CR, slip op. (Tex. Ct. App. Aug. 31, 2011) (same); *State v. Nunez-Valdez*, 200 N.J. 129 (2009) (mandating revision of New Jersey’s boilerplate warning to defendants that guilty plea “may” result in deportation where crime is aggravated felony); *People v. Garcia*, 907 N.Y.S.2d 398, 407 (N.Y. Sup. Ct. 2010) (holding “the Court’s general warning will not automatically cure counsel’s failure nor ease the consequent prejudice”).

Fourth, if the defense attorney’s failure to recognize the immigration consequences prevents him from negotiating a reasonable alternative plea that eliminates or mitigates these consequences, court or prosecutor notifications are unavailing to cure the prejudice flowing from that error. The *Padilla* Court specifically contemplated the use of immigration consequences information not only to inform a defendant’s choice regarding a guilty plea, but also to inform defense negotiation strategy: “Counsel who possess the most rudimentary understanding of the deportation consequences...may be able to plea bargain

creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation.” *Id.* at 1486. If the consequence to the defendant of the attorney’s failure to appreciate the immigration consequences is that the defendant loses the opportunity to negotiate a plea that mitigates or eliminates the immigration consequences, this type of prejudice is not addressed by a court or prosecutor notification once the negotiations have concluded.

Commonwealth v. Clarke, 460 Mass. 30, 47 (2011) (one way to demonstrate prejudice pursuant to *Padilla* is that “there is a reasonable probability that a different plea bargain (absent such consequences) could have been negotiated”); *People v. Bautista*, 115 Cal.App.4th 229, 238-42 (2004) (defendant prejudiced by attorney’s failure to “attempt to ‘plead upward,’ that is, pursue a negotiated plea for violation of a greater...offense” that carried less severe immigration consequences). Thus, this Court should hold that a court or prosecutor notification does not cure the prejudice that flows from a defense attorney’s failure to negotiate a reasonable resolution that mitigates or eliminates the immigration consequences.

Finally, this Court should consider the context in which any judicial or prosecutorial warnings were given to the defendant. At the time the state and the judge addressed immigration consequences in this case, Mr. Keserovic had already conferred with counsel and decided on pleading guilty to theft with a 365 day sentence. The typical criminal defendant, when confronted with the formality of the plea colloquy and sentencing hearing, delivered in a language of


legalese not easily understood by laymen, is very unlikely to engage in a meaningful dialogue with the judge or the prosecutor about the decision to accept the plea agreement. The average defendant is even less likely to question the advice he has received from his trusted attorney because of statements by a judge or prosecutor during a generally scripted proceeding. To the extent that the court or the prosecutor phrases the consequences in a reasonably accurate fashion, the defendant cannot know whether by chance to the judge or the state has gotten it right.

For all of the reasons articulated above, warnings from the prosecutor and the judge regarding immigration consequences do not defeat a *Padilla* post-conviction claim.

V. PRAYER FOR RELIEF

- A. That the judgment be vacated and a new trial be granted; and/or
- B. For such other relief as the Court deems just and proper.

Respectfully submitted this 25 day of Sept, 2012.

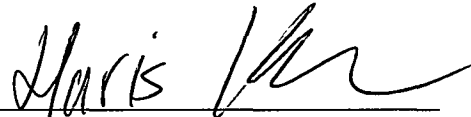


Maria E. Andrade
Attorney for Haris Keserovic

VERIFICATION OF PETITION

I, Haris KESEROVIC, being duly sworn under oath, state:

1. I know of the contents of the foregoing Petition for Post-Conviction Relief,
and that the matters and allegations set forth are true and correct to the best
of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'Haris Keserovic', is written over a horizontal line.

Haris KESEROVIC

CERTIFICATE OF SERVICE

I, Leszek Szymanski hereby certify that on September 25, 2012

I caused a true and correct copy of the foregoing document to be:

☒ mailed (FIRST CLASS, POSTAGE PRE-PAID)

☐ faxed

☐ hand delivered

To:

Ada County Prosecutor's Office
200 West Front Street, Room 3191
Boise, ID 83702

Leszek Szymanski
Leszek Szymanski

Affidavit of Haris KESEROVIC

My name is Haris Keserovic. I am submitting this affidavit with my application for post-conviction relief. I am currently a Lawful Permanent Resident of the United States. I was born on [REDACTED] and I am currently 27 years old. My family and I came to the United States from war torn Bosnia in 1998 when I was approximately 13 years old. I have lived in the United States ever since.

I was arrested in January of 2012 and was eventually charged with petit theft, a misdemeanor. I was represented by Jeffrey McKinnie who practices law in Boise, Idaho.

My previous attorney never told me how my conviction would affect my immigration status. I remember the court and the prosecutor saying that I *might* have immigration consequences because of my conviction. When I heard this, I turned to Mr. McKinnie and asked him if this was true. Mr. McKinnie told me "They are just trying to scare you." The other time that Mr. McKinnie and I discussed immigration consequences was when I talked to Mr. McKinnie about my visit with an immigration officer while I was in jail. I told Mr. McKinnie that the agent told me that I would be deported if I had a felony. When I told him this, Mr. McKinnie just repeated to me: "So, the immigration agent told you that you would get deported if you got a felony?" I confirmed that this is what the agent told me. After this, my father and I went to Mr. McKinnie's office to discuss a potential plea agreement. Mr. McKinnie suggested that I admit guilt to a misdemeanor petit theft offense. I was unsure because I had always maintained my innocence. During this conversation, Mr. McKinnie said I should take the deal, that I wouldn't have any problems with immigration and that within sixty (60) days I would have my life back on track. After consulting with my father, I decided to take the deal.

I was almost done with my work release service when I found out that immigration put a hold on me and I was not o.k. I was done with work that day and the sheriff told me that they had to move me to Ada County Jail because immigration put a hold on me. The next day an immigration agent came to talk to me. I asked the agent what was happening because I had a misdemeanor. The agent told me that I was convicted of a felony because I received a 365 day sentence.

Since that time, I have learned more about the immigration consequences of the theft conviction from my current attorneys. I now understand that under immigration law, I must be deported and the immigration judge cannot cancel my removal. There is no

question that I would not admit guilt to the crime if I had known that this conviction would require my deportation. If I were able to do it again, I would not admit guilty to theft and would take this case to trial. My 4 year old son is here, the mother of my child is here, both of my parents and my two younger brothers are here as well. My son is a U.S. Citizen and the rest of my immediate family have Lawful Permanent Resident status in the United States. In addition, my aunt lives in the United States and I have many cousins in the United States. I have every reason to fight the criminal case so that I can at least ask an Immigration Judge to let me stay in the United States with my family.

I swear under penalty of perjury that the contents of this statement are true and correct to the best of my knowledge and ability.

Haris Keserovic
Haris Keserovic

9-11-12
Date

The Affidavit of Haris Keserovic was sworn to and signed before me this 11th day of September, 2012.

Signed: [Signature]
Notary public for the state of Idaho
Residing at Boise, ID
My commission expires 9/27/15



Affidavit of Jeffrey McKinnie

My name is Jeffrey McKinnie. I am an attorney licensed to practice law in the state of Idaho. My business mailing address is PO Box 9469, Boise, Idaho 83707. My business telephone number is (208) 429-0088.

I represented Mr. Haris Keserovic in criminal case CR-FE-2012-0000311 before the Fourth Judicial District for Idaho, Ada County. In the course of my representation of Mr. Keserovic, I learned that he is a Lawful Permanent Resident (LPR) of the United States. I learned this before Mr. Keserovic entered into any plea agreement with the state and before he entered a plea of guilty to the reduced charge of petit theft.

To resolve Mr. Keserovic's criminal case, I negotiated a Rule 11 plea agreement and recommended that Mr. Keserovic admit that he committed the crime of misdemeanor petit theft and agree to a one year suspended sentence. This conversation took place at my office. The Rule 11 Plea Agreement contained a stipulation that Mr. Keserovic be sentenced to 365 days in jail with 305 days suspended. I told Mr. Keserovic that the offense was a misdemeanor, not a felony. I did not tell Mr. Keserovic that the offense was an aggravated felony of any kind. The Rule 11 Plea Agreement we crafted was binding on the court. On my advice, Mr. Keserovic signed a Rule 11 Plea Agreement.

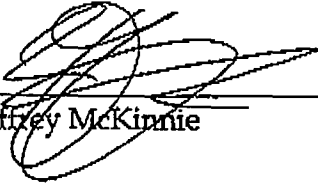
At no time did I inform Mr. Keserovic that his conviction for misdemeanor petit theft with a one year suspended sentence would be an aggravated felony under immigration law (the Immigration and Nationality Act, or "INA") and it would eliminate his eligibility for any discretionary relief from removal from an Immigration Judge.

During the court proceeding, I recall that the prosecutor said that Mr. Keserovic was pleading guilty to a felony because it was a theft offense with one year sentence and the court saying something about the conviction affecting his immigration status generally. Mr. Keserovic turned to me after these statements were made. I don't remember exactly what he said, but I recall that he stated that he did not want to plead guilty to a felony. I told him that he was pleading guilty to a misdemeanor, not a felony.

I did not know that the misdemeanor petit theft under state law is defined as an "aggravated felony" in immigration law. I now understand that it is virtually certain Mr. Keserovic will be subject to mandatory removal (deportation) for accepting the resolution that I recommended to him. I make this affidavit admitting that I failed to advise Mr. Keserovic pursuant to the requirements under Padilla v. Kentucky, 130 S. Ct. 1473 (2010).

In order to have provided Mr. Keserovic correct advice about the immigration consequences of his guilty plea, I should have told him before he even entered his plea that by admitting guilt under the proposed Rule 11 agreement, the conviction would meet the definition of "aggravated felony" under the INA, without any hope that the Immigration Judge could cancel his removal.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.


Jeffrey McKinnie

9-25-12
Date

The Affidavit of Jeffrey McKinnie was sworn to and signed before me this

25th day of September 2012.

Signature: Yesica Castaneda

Name: Yesica Castaneda


Notary public for the state of Idaho

Residing at Boise

My commission expires: 6/28/18



FILED
Wednesday, September 26, 2012 at 02:37 PM
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY: 
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC, PLAINTIFF
Plaintiff(s)

vs

STATE OF IDAHO, DEFENDANT
Defendant(s)

CASE NO. CV-PC-2012-17517

CERTIFICATE OF MAILING

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I
have mailed, by United States Mail, one copy of the: **PETITION FOR POST
CONVICTION RELIEF** as notice pursuant to Rule 77 (d) I.R.C.P. to each of the parties
or attorneys of record in this cause in envelopes addressed as follows:

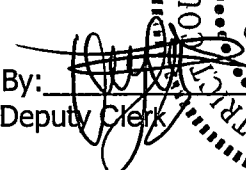
ADA County Prosecuting Attorney
Interdepartmental Mail

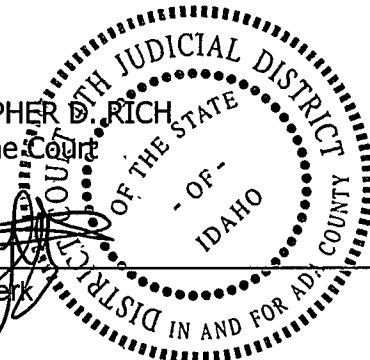
ADA County Public Defender
Copy In File

Maria E. Andrade
Attorney At Law (For Petitioner Haris Keserovic)
P.O. Box 2109
Boise, ID 83701

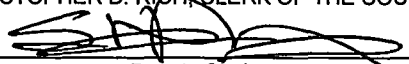
Dated: Wednesday, September 26, 2012

CHRISTOPHER D. RICH
Clerk of the Court

By: 
Deputy Clerk



sk

FILED
Friday, October 12, 2012 at 08:36 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: 
Deputy Clerk

SEAN A. MILLS

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

Haris Keserovic
Plaintiff,

vs.

State of Idaho
Defendant.

CASE NO. CV-PC-2012-17517

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Pretrial Conference Hearing

Tuesday, November 20, 2012 @ 08:30 AM
Judge: Theresa Gardunia

ADA COUNTY COURTHOUSE 200 W. Front Street, Boise, Idaho 83702

I certify that copies of this Notice were served as follows on Friday, October 12, 2012.

Plaintiff's Counsel:

Maria E Andrade
PO Box 2109
Boise, ID 83701

Plaintiff:

Haris Keserovic
3041 N Five Mile Road #102
Boise, ID 83713

Mailed ☒ Hand Delivered ☐ Faxed ☐

Mailed ☒ Hand Delivered ☐ Faxed ☐

Def's Counsel:

Mailed ☐ Hand Delivered ☐ Faxed ☐

Defendant:

State of Idaho

Mailed ☐ Hand Delivered ☒ Faxed ☐ *interdepartmental*

Dated this 12th day of October, 2012.

CHRISTOPHER D. RICH
Clerk of the Court

By: 
SEAN A. MILLS

NO. 1006 FILED
A.M. 1006 P.M.

OCT 25 2012

CHRISTOPHER D. RICH, Clerk
By JAMIE RANDALL
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shawna Dunn
Deputy Prosecuting Attorney
Idaho State Bar No. 4606
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC	)	CASE NO.	CV-PC-2012-17517
)		
Petitioner,)		
)		
vs.	)	ANSWER	
)		
STATE OF IDAHO,)		
)		
Respondent.)		
_____)		

COMES NOW, Shawna Dunn, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and does hereby answer Petitioner's Haris Keserovic's petition for post-conviction relief in the above-entitled action as follows:

I.

GENERAL RESPONSES TO HARIS KESEROVIC'S POST-CONVICTION ALLEGATIONS

All allegations made by Haris Keserovic's are denied by the state unless specifically admitted herein.

II.

SPECIFIC ANSWERS TO HARIS KESEROVIC'S POST-CONVICTION ALLEGATIONS

1. Answering paragraphs 1-2 Haris Keserovic's Petition for Post-Conviction Relief, Respondent neither admits nor denies due to insufficient information.
2. Answering paragraphs 3-4 the State admits.
3. Answering paragraph 5, asserting the contents of communications between Mr. Keserovic and Mr. McKinnie, the State neither admits nor denies.
4. Answering paragraph 6 the State admits.
5. Answering paragraph 7, the State admits.
6. Answering paragraph 8, the State admits that the Honorable Judge Theresa Gardunia of the Magistrate Division of the "Ada County District Court" entered a judgment of conviction and probation as described.
7. Answering paragraph 9, the State denies. The State actually advised that the 365 day sentence, although most of it was suspended would amount to an aggravated felony under the immigration laws. The State further advised that the defendant was "subject" to deportation. A copy of the transcript is attached.
8. Answering paragraph 10 the State denies. While the paragraph is not phrased as a quote, neither is it exactly accurate. Hence the State denies that paragraph is entirely accurate.
9. Answering paragraph 11, the State admits that this is the substance of the attached affidavit. The State does not admit the truthfulness of that affidavit.
10. Answering paragraphs 12-15, the State neither admits nor denies due to lack of information.
11. Answering paragraph 16, the State neither admits nor denies.
12. As to the remainder of the petition, the State submits it amounts to a memorandum in support of the petition and is argumentative. Accordingly, the State denies the remainder of the petition generally.

FIRST AFFIRMATIVE DEFENSE

Haris Keserovic's petition fails to state any grounds upon which relief can be granted. Idaho Code § 19-4901(a); I.R.C.P. 12(b)(6).

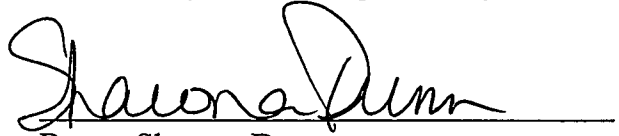
WHEREFORE, Respondent prays for relief as follows:

- a) That Haris Keserovic's claims for post-conviction relief be denied;
- b) That Haris Keserovic's claims for post-conviction relief be dismissed;
- c) for such other and further relief as the court deems necessary in the case.

DATED this 24th day of October, 2012.

GREG H. BOWER

Ada County Prosecuting Attorney

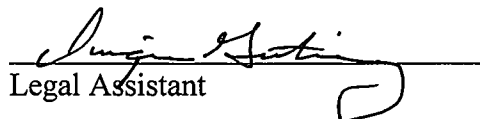


By: Shawna Dunn
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2012, I caused a true and correct copy of the foregoing ANSWER to be placed in the United States mail, postage prepaid, addressed to Mr. Keserovic's attorney of record:

Maria Andrade.
P.O. Box 2109
Boise, ID 83701



Legal Assistant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
STATE OF IDAHO FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

THE STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.	)	Case No. CR-FE-2012-0000311
)	
HARIS KESEROVIC,)	
)	
Defendant.)	
_____)	

CHANGE OF PLEA/SENTENCING
THE HONORABLE THERESA GARDUNIA, PRESIDING
STATE OF IDAHO MAGISTRATE
BOISE, IDAHO
JUNE 26, 2012

TRANSCRIPTION BY:
Canyon Transcription
P.O. Box 387
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

A P P E A R A N C E S:

FOR THE STATE:

MS. BARBARA DUGGAN
Deputy Prosecuting Attorney
200 West Front Street, Rm. 3191
Boise, Idaho 83702

FOR THE DEFENDANT:

MR. JEFFREY MCKINNIE
Attorney at Law
P.O. Box 9469
Boise, Idaho 83702

1 (Proceedings begin.)

2 COURT: Are we ready with Mr. Keserovic?

3 MR. McKINNIE: Yes.

4 COURT: All right. Let's talk up Mr. Keserovic's

5 case. For the record, FE-2012-311. How are we proceeding,

6 Mr. McKinnie?

7 MR. McKINNIE: Judge, we're going to enter a guilty

8 plea to the Rule 11 agreement and just ask you to proceed

9 on the Rule 11.

10 COURT: All right. Is the State amending the

11 current Complaint?

12 MS. DUGGAN: Yes, Judge. In this particular case,

13 I would ask you to, on the Complaint, amend it reducing it

14 to the crime of petit theft. Strike the word "felony."

15 Insert the word "misdemeanor." Then under 18-2407(1)(b),

16 we ask you to strike the (1)(b) and change that to a 2.

17 COURT: And then anything in the body of the

18 Complaint that needs to be changed?

19 MS. DUGGAN: No, Judge. That actually is what

20 occurred so --

21 COURT: All right. All right. Mr. Keserovic, have

22 you had sufficient time to talk to your attorney about

23 entering your plea today?

24 MR. KESEROVIC: Yes, ma'am.

25 COURT: Do you believe that you need to have

1 anymore time to talk to your attorney before the Court
2 accepts your plea?

3 MR. KESEROVIC: No, ma'am.

4 COURT: I've been handed a document entitled
5 "Rule 11 Plea Agreement." I see you have a copy of that
6 document, the pink sheet there in front of you. That
7 document indicates that you are going to be pleading guilty
8 to the charge of petit theft; is that correct?

9 MR. KESEROVIC: Yes, ma'am.

10 COURT: Ms. Duggan.

11 MS. DUGGAN: Judge, I hate to do this to you but
12 prior to accepting the plea of guilty, we just need to make
13 it very clear on the record the State understands a petit
14 theft with 365 days as being what the ICE or the federal
15 government determines to be an aggravated felony even
16 though it is a misdemeanor. It is the State's
17 understanding that this does subject Mr. Keserovic to
18 deportation and so in entering this plea of guilty, we just
19 want it very clear on the record that he recognizes that it
20 does subject him to that potential.

21 COURT: Mr. McKinnie, have you had that discussion
22 with Mr. Keserovic?

23 MR. MCKINNIE: On multiple occasions, Judge. We've
24 talked about the fact that this could raise immigration
25 issues with regard to entering a plea in this case.

1 COURT: So Mr. Keserovic, you understand that by
2 entering a plea of guilty to this charge this morning that
3 it could affect your citizenship, your application for
4 citizenship or your ability to work in the United States?

5 MR. KESEROVIC: Yes, ma'am.

6 COURT: All right. Mr. Keserovic, other than what
7 is contained on that Rule 11 plea agreement, have there
8 been any promises made to you or threats made against you
9 in order to get you to enter a plea today?

10 MR. KESEROVIC: No, ma'am.

11 COURT: Are you under the influence of alcohol,
12 drugs or any prescription medications?

13 MR. KESEROVIC: No, ma'am.

14 COURT: This is your own decision to enter a plea
15 of guilty after having a discussion with your attorney; is
16 that correct?

17 MR. KESEROVIC: Yes, ma'am.

18 COURT: And Mr. Keserovic, you were sitting in the
19 courtroom. Did you hear the Court go over with the
20 previous defendant, the first defendant -- well --

21 MR. KESEROVIC: But I did, yes, hear that.

22 COURT: You heard that. And I apologize but I'm
23 trying to recall that that was Mr. Englet (phonetic) that
24 the Court took up and advised everyone who was appearing
25 before the Court on a Rule 11 that they needed to listen to

1 what rights they were giving up as a result of entering
2 into the Rule 11. You heard that?

3 MR. KESEROVIC: Yes, ma'am.

4 COURT: Have you had a discussion as well with your
5 attorney about what rights you're giving up today by
6 entering into this Rule 11 plea agreement?

7 MR. KESEROVIC: Yes, ma'am.

8 COURT: And you understand that if you enter a plea
9 of guilty to the charge of petit theft that you will not be
10 able to come back to court and challenge either the entry
11 of your plea or the sentence that is being imposed by the
12 Court?

13 MR. KESEROVIC: Yes, ma'am.

14 COURT: And that the Court will treat you as if you
15 are guilty upon your plea of guilty?

16 MR. KESEROVIC: Yes, ma'am.

17 COURT: Mr. Keserovic, the Rule 11 plea agreement
18 indicates that the Court in this case will enter a judgment
19 of conviction on a count of -- one count of petit theft,
20 impose 365 days in the county jail, suspend 305, 60 days to
21 serve with work release if that's available or if you
22 qualify for that through the sheriff's department. The
23 Court will impose a \$1,000 fine, suspend 750 of it, impose
24 court costs of 137.50. Court will require restitution in
25 the amount of \$490 and I understand that -- has that

1 been --

2 MR. McKINNIE: Yeah, I have a check out of my trust
3 account right now.

4 COURT: All right. In addition, the Court will
5 place you on probation for two years. That probation will
6 be consecutive to what your current probation is and that
7 probation will be supervised. The Court will require that
8 you take cognitive self change class. Upon completion of
9 one year of successful probation and having the class done
10 and with your probation officer's approval which means you
11 will have to convince your probation officer that you are a
12 good candidate for unsupervised probation, you can motion
13 the Court to be moved from supervised probation to
14 unsupervised probation.

15 And then the final note that is on the Rule 11 plea
16 agreement is that the jail that the Court imposes today can
17 be served concurrently with whatever present jail you may
18 have to be served in other cases. Is that correct?

19 MR. KESEROVIC: Yes, ma'am.

20 (Discussion held off the record.)

21 COURT: So Mr. Keserovic, what are you currently on
22 probation for?

23 MR. KESEROVIC: Currently -- well, I just got done
24 with one of my cases I closed and I currently am on
25 probation for a battery charge.

1 COURT: Okay. How long is your probation in that
2 case?

3 MR. KESEROVIC: Till September 9 of this year.

4 COURT: So 9/9 of '12?

5 MR. KESEROVIC: Yes, ma'am.

6 COURT: And you were placed on probation in
7 September? Last September?

8 MR. McKINNIE: Judge, if I could help him, he
9 actually just got probation revoked and the remaining
10 sentence imposed by you.

11 COURT: On a PV.

12 MR. McKINNIE: Yes.

13 COURT: Okay.

14 MR. McKINNIE: Yes.

15 COURT: Okay.

16 MR. McKINNIE: So probation is basically over in
17 another case in September and this is going to be
18 consecutive to that so --

19 COURT: Okay. So his probation in this case will
20 begin on 9/10, 2012.

21 MR. McKINNIE: Yes. Yes.

22 COURT: And it will run through 9/10, 2014.

23 MR. McKINNIE: Yes. That's exactly right. That's
24 exactly right. That's correct.

25 COURT: All right. Mr. Keserovic, is that your

1 complete understanding of the agreement, what the Court has
2 recited based on the Rule 11 plea agreement as well as when
3 your probation will start and end in this matter?

4 MR. KESEROVIC: Yes, ma'am.

5 COURT: And Mr. Keserovic, you do understand that
6 you are going to get the sentence that is set out in this
7 Rule 11 plea agreement upon your plea of guilty in this
8 case, correct?

9 MR. KESEROVIC: Yes.

10 COURT: All right. Mr. Keserovic, I have before me
11 a Complaint amended today. That Complaint alleges that on
12 or about the 6th day of January, 2012, in the County of
13 Ada, State of Idaho, you did commit the crime of petit
14 theft, a misdemeanor violation of Idaho Code 18-2403. Do
15 you have any questions about that charge?

16 MR. KESEROVIC: No, ma'am.

17 COURT: As to that allegation, are you entering a
18 plea of guilty or not guilty?

19 MR. KESEROVIC: Guilty, ma'am.

20 COURT: And Mr. McKinnie, do you believe there is a
21 factual basis for Mr. Keserovic's plea?

22 MR. McKINNIE: There is.

23 COURT: All right. Anything the State would like
24 to add, Ms. Duggan?

25 MS. DUGGAN: Did Mr. -- I'd like a factual basis by

1 Mr. Keserovic.

2 COURT: I'm going to ask him for that.

3 MS. DUGGAN: Oh, thank you. Judge, on this date
4 in -- I think it's an appropriate resolution according to
5 Ms. Dunn's request. I believe it took into account all
6 matters. I believe it has been discussed that it subjects
7 him to deportation and so I don't have anything else to add
8 after that.

9 COURT: Mr. McKinnie.

10 MR. MCKINNIE: Yes. Judge, I've been working on
11 this case with Ms. Dunn for a while in this case. I
12 realize the Court's going to ask him a factual basis. I
13 can give you some background.

14 This was a theft that had occurred in Winco. It
15 was all captured on video. It was a purse that was taken
16 out of the victim's shopping cart. Three or four months
17 later, Mr. Keserovic was contacted by the police,
18 voluntarily went down. The person in the video looked
19 exactly like him. There was ample evidence to support that
20 there was a factual basis for it. Mr. Keserovic said it
21 looked like him but he didn't do it.

22 Ms. Dunn and I worked even with his previous
23 employer and took the video -- I guess Shawn (phonetic),
24 the investigator, took the video over to the employers --
25 his previous employers' place. Some of them said it did.

1 Some of them said it didn't. Mr. Keserovic and I talked
2 about this case. Certainly there was enough evidence that
3 he could have been convicted of this. Mr. Keserovic wanted
4 to resolve this case and was willing to plead guilty to the
5 charge as set forth today in this Rule 11 agreement.

6 One of the bases was to pay the restitution up
7 front. It's my understanding that the victim lives in the
8 country of Norway and we are ready to tender a check to
9 that amount and he's got 60 days of jail to do on this case
10 and it's going to subject him to possibly not being able to
11 become a permanent U.S. citizen. He realizes that, the
12 consequences, and we'd just ask that you would accept this
13 Rule 11 plea agreement.

14 COURT: Mr. Keserovic.

15 MR. KESEROVIC: Yes, ma'am.

16 COURT: What would you like to say?

17 MR. KESEROVIC: Your Honor, the detectives said
18 this occurred on November of like this year or something.
19 They went around with some still photos like to my
20 neighbors but nobody ever came to my house. I read the
21 discovery and they said in it that they came to my house
22 and talked to me four or five times. Never once did nobody
23 came to my house.

24 I was contacted by my probation officer and I was
25 told that a detective was asking about me. I asked for his

1 number and I called the detective and I asked him what was
2 going on. He wouldn't tell me over the phone so I told him
3 that I don't feel --

4 (Discussion held off the record.)

5 COURT: I don't mind listening to what Mr.
6 Keserovic would like to say.

7 MR. McKINNIE: Okay.

8 COURT: That's fine.

9 MR. KESEROVIC: When I called the detective, he
10 asked me to come like a week later to talk to them and I
11 said, "No, I would like to come down there right now," and
12 at that time, he told me I could come to the office and
13 talk to him about it. They told me I wasn't under arrest
14 or anything. They let me go.

15 About a week later or so, I was contacted by my
16 probation officer again and asked me to come down to talk
17 to him. I went down there and the detective was there with
18 another officer and they arrested me on a grand theft
19 charge.

20 COURT: Did you talk to your probation officer
21 about whether or not he viewed the video?

22 MR. KESEROVIC: I have not, no.

23 COURT: So you might want to have that conversation
24 because there's an inference here that your probation
25 officer viewed the video and believed that it was you on

1 the video.

2 MR. KESEROVIC: Your Honor, the person in that
3 video resembles me.

4 COURT: Okay. Here's the thing, Mr. Keserovic. I
5 know that you are entering a plea of guilty in this case
6 because you believe that this is the best way to resolve
7 the case to avoid a felony charge.

8 The fact of the matter is that you've indicated to
9 the Court that you are guilty of this charge and you need
10 to proceed accordingly and your resistance to the
11 acceptance of what's happening in this case as a result of
12 the sentencing, that is not going to bode you well on
13 probation.

14 I don't know what's in your head because I
15 understand that you're saying that you didn't do this but
16 if you did do this, Mr. Keserovic, you need to step up to
17 the line and you need to accept it and you need to take it
18 because the fact of the matter is that you've admitted to
19 the Court that you've done it and if in fact you did do it,
20 you need to get over this resistance that you have in your
21 head in denying it because denial in this case is not going
22 to serve you well while you are on probation.

23 You need to come to it and you need to accept that
24 you got caught red-handed and by red-handed meaning a video
25 tape exists of you stealing something out of somebody's

1 cart. That's just the pure facts of the matter.

2 And you believe that that's true enough that you
3 are here today entering a plea of guilty on the charge.
4 You believe that there is sufficient evidence available on
5 that video to show that you are the person in that video
6 doing that act. I'm just telling you that your resistance
7 in coming to it yourself is not going to be something
8 that's going to serve you well while you're on probation.
9 So you need to get past it.

10 I'm going to accept your plea. On that basis, Mr.
11 Keserovic, I'm imposing the sentence that is set out in the
12 Rule 11 plea agreement. Your probation in this case does
13 not start until September 10, 2012. I understand that you
14 currently are on supervised probation. The Court is going
15 to leave open the fact that the State can come back and
16 have this case amended nunc pro tunc, Ms. Duggan, in the
17 event that Mr. Keserovic is released from supervised
18 probation in the other case early so that he goes
19 continuously on supervised probation.

20 I don't want there to be a gap in the supervised
21 probation. So I'm going to leave that open. I don't know
22 whether or not there's a possibility that that will occur.
23 I just simply don't want it to occur because I don't want
24 there to be a gap in probation.

25 But as it stands today, your probation in this case

1 begins September 10, 2012. It will run through September
2 10, 2014. I'm imposing the 60 days of jail. You can set
3 that up with the sheriff's office. Work release is the
4 only option. And again that's concurrent as has been
5 agreed by the parties.

6 MR. McKINNIE: Judge, I think he's got seven days
7 credit on this.

8 COURT: He does? And I apologize. I should have
9 asked for that. I'm not showing that there was an arrest
10 in this case, was there?

11 MR. McKINNIE: Yeah, he got arrested. I actually
12 came and argued in video court.

13 MS. DUGGAN: It looks like he was in court at video
14 arraignment in custody on January 9.

15 COURT: And then I'm not even showing --

16 CLERK: Different order because it came from
17 upstairs so it (inaudible).

18 COURT: The bond. If you could tell me when the
19 bond was posted. So he was arrested September excuse me?
20 I'm sorry.

21 MS. DUGGAN: I show the video arraignment on,
22 excuse me, January 9, 2012.

23 COURT: 1/9. Okay.

24 MS. DUGGAN: And I'll see when he got booked into
25 the jail, if it's a day earlier.

1 COURT: Okay. Do you have the warrant? And he
2 bonded on January 10.

3 MR. McKINNIE: Well, he got arrested the 6th at
4 night and then -- and then was in a video arraignment --

5 COURT: He was arrested January 6 and bonded
6 January 10.

7 MS. DUGGAN: He was. That's what the (inaudible)
8 sheet says.

9 COURT: So I'm showing five days.

10 MR. McKINNIE: Okay.

11 COURT: Is that correct? All right. So that
12 leaves 55 days to serve.

13 All right. Mr. Keserovic, you are being placed on
14 probation in this case. It does require your agreement
15 with the terms and conditions of probation. It's what
16 we've talked about this morning and contained on the
17 judgment form. If you agree with everything that we have
18 talked about, please sign the judgment at the bottom and
19 put your address underneath your name at the top of the
20 form.

21 And how much time do you need to pay those fines
22 and costs? Ten months? Longer?

23 MR. McKINNIE: Yeah. Judge, he's got probably
24 some -- 60-some days left of work release so it would be --

25 COURT: Well, is he working?

1 MR. McKINNIE: Yeah. He's actually --
2 COURT: You're going to be working.
3 MR. McKINNIE: Yeah.
4 COURT: Okay. So is ten months enough or do you
5 need -- ten months is enough. Okay.
6 MR. KESEROVIC: Uh-huh.
7 MR. McKINNIE: Do I make this out to you, all of
8 this?
9 MS. DUGGAN: Yeah. It goes up to -- just take it
10 upstairs and they'll tell you to (inaudible).
11 MR. McKINNIE: Don't put a name in it?
12 MS. DUGGAN: They'll give you a receipt. You need
13 to put a case number on it on your memo line.
14 MR. McKINNIE: Yeah, I've got it on here.
15 MS. DUGGAN: And then they'll give you a receipt.
16 CLERK: Are they not paying restitution
17 (inaudible)?
18 COURT: Well, he can pay it through the court. Did
19 you not want it to go that way?
20 MS. DUGGAN: Oh, no, that's fine.
21 COURT: You can submit that to the clerk
22 downstairs.
23 MS. DUGGAN: Did you order --
24 COURT: It's on the judgment.
25 MS. DUGGAN: Okay.

1 COURT: So you can submit it to the clerk and
2 they'll process it.

3 MR. McKINNIE: Okay. Okay.

4 COURT: It is on that judgment, isn't it?

5 CLERK: (Inaudible) upstairs but it might take a
6 couple minutes to get in (inaudible) the restitution.

7 MR. McKINNIE: So should I take it upstairs or
8 downstairs? Downstairs, okay.

9 COURT: Downstairs. Did I put that on the
10 judgment? I believe that I did. Okay. Great. Thank you.

11 MR. McKINNIE: Thank you.

12 MR. KESEROVIC: Thank you, Judge.

13 COURT: Good luck, Mr. Keserovic.

14 MR. KESEROVIC: Thank you.

15 (Proceedings concluded.)
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24
25

STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed
transcriber, do hereby certify:

That the foregoing transcript is a transcript of a
disk made of the proceedings in the matter of State of
Idaho vs. Haris Keserovic, Ada County Case No.
CR-FE-2012-0000311, before the Honorable Theresa Gardunia,
Magistrate of the Magistrate Division of the District Court
of the Fourth Judicial District of the State of Idaho, in
and for the County of Ada; that the foregoing pages 1
through 18 of this transcript contains as accurate and
complete a transcription of said disk as I was able to
make.

IN WITNESS WHEREOF, I have hereunto set my hand
this 23rd day of October, 2012.

____/s/ Tamara A. Weber_____
TAMARA A. WEBER, CSR RMR
Idaho CSR License No. 278
Transcriber

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A.M. 1006 P.M. 1006

OCT 25 2012

CHRISTOPHER D. RICH, Clerk
By JAMIE RANDALL
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,)	
	)	Case No. CV-PC-2012-17517
Petitioner,)	
)	
vs.)	
	)	MOTION FOR SUMMARY
THE STATE OF IDAHO,	)	DISPOSITION
)	
Respondent.)	
_____)	

The State of Idaho, by and through the undersigned deputy Ada County Prosecuting Attorney responds to Petition for Post Conviction Relief and moves for dismissal.

STANDARD

For the Uniform Post Conviction claims the standard is well settled:

9/10

An application for post-conviction relief initiates a proceeding which is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct.App.1992). Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct.App.1990). An application for post-conviction relief differs from a complaint in an ordinary civil action. An application must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal. ...

Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct.App.1991); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.App.1988); *Ramirez v. State*, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct.App.1987). ...

Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct.App.1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct.App.1986).

Knutsen v. State, 144 Idaho 433, 437-8, 163 P.3d 222, 226-7 (Ct. App. 2007).

The petitioner argues that his counsel was ineffective.

To prevail on a claim of ineffective assistance of counsel, a post-conviction petitioner must show that the attorney's performance was deficient and, in most cases, must also show that prejudice resulted from the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); *Berg v. State*, 131 Idaho 517, 520, 960 P.2d 738, 741 (1998); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct.App.1990). Deficient performance is established if the applicant shows

that the attorney's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; *Berg*, 131 Idaho at 520, 960 P.2d at 741; *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Russell*, 118 Idaho at 67, 794 P.2d at 656. To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance *659 **43 the outcome of the criminal case would have been different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 697; *Berg*, 131 Idaho at 520, 960 P.2d at 741; *Aragon*, 114 Idaho at 761, 760 P.2d at 1177; *Russell*, 118 Idaho at 67, 794 P.2d at 656.

Mintun v. State, 144 Idaho 656, 658-59, 168 P.3d 40, 42-43 (Ct. App. 2007). In other words, the petitioner must establish that counsel's representation fell below an objective standard of reasonableness, the defendant was prejudiced, and that the outcome of the case would have been different but for the deficient performance.

GROUND FOR RELIEF

The petitioner's claims for relief all revolve around the entry of his plea pursuant to a Rule 11 agreement for 365 day total sentence, with 305 days suspended, where he was subject to deportation for the same due to the crime's status as an aggravated felony. The petitioner claims that Mr. McKinnie did not tell Mr. Keserovic that a "conviction for a theft offense with a 365 day sentence was an aggravated felony under immigration law." While that may or may not be true, the defendant was advised of this fact, on the open record. (See attached transcript, page 4.) In fact, he was further told that he was subject to deportation:

a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State's understanding that this does subject Mr. Keserovic to deportation.

(Tr., pg. 4, lns. 13-18.) Later in the plea hearing, the State again made the same point, "I believe it has been discussed that it subjects him to deportation and so I don't have anything else to add after that." (Tr., pg. 10, lns. 6-8.)

The petitioner draws a parallel to Padilla v. Kentucky, 130 S.Ct. 1473 (2010). However, the essential difference is that in this case the defendant was given the correct information prior to the acceptance of the plea. The record of the plea hearing is clear. Unlike Mr. Padilla, whose only information came from his attorney, Mr. Keserovic was carefully admonished on the open record. Hence, even making all factual assumption to his benefit, Mr. Keserovic cannot meet the second prong of Strickland.

Mr. Keserovic claims that, “had [he] understood that his conviction for petit theft with a 365 day sentence would lead to virtually certain deportation...he would have exercised his right to a jury trial or he would have sought a one-day sentence reduction.” The facts of the case are outlined during the plea hearing, which is attached. Given the nature of the case, exercising his right to a jury trial would have likely meant that he would be convicted of Grand Theft, with all of the accompanying consequences in the United States, followed by deportation anyway. There was surveillance video of the defendant stealing the victim’s purse. Even the defense conceded that the person stealing the bag looks “exactly” like the defendant. (Tr., pg. 10, lns. 14-20; pg. 13, lns. 2-3.) For the petitioner to say he would have pursued a trial if fully informed is disingenuous – he was *in fact* aware of the consequences, but chose to proceed with the plea. The petitioner made his own choice after being clearly advised. Accordingly, there no prejudice can attach even assuming *arguendo* that counsel gave the petitioner incomplete information.

Further, there is no evidence in the record that Mr. Keserovic was in a position to successfully negotiate with the State for a one-day reduction in his sentence. The petitioner’s current counsel openly speculates that such an agreement could have been reached – however that speculation has no basis. There is no affirmative evidence of the same and the petitioner cannot meet his burden by simply having current counsel guess. The procedural history is such that the State did give the defendant a significant benefit by reducing the

underlying charge. There is no fair inference that the State would necessarily continue to improve Mr. Keserovic's position.

The petitioner alleges that the State advised that deportation was a "potential." The State did use that word *after* advising the Court and counsel of the fact that the crime was an aggravated felony and that the defendant was subject to deportation, saying, "we just want it very clear on the record that he recognizes that it does subject him to that potential." (Tr., pg. 4, lns. 18-20.) However, the attached transcript reveals that the State actually advised Mr. Keserovic that the crime to which he was pleading was an aggravated felony for immigration purposes and tells him twice that he would be "subject" to deportation. (Tr., pg. 4, lns. 13-18; pg. 10, lns. 6-8.) The Court then inquired of Mr. Keserovic, "you understand that by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or you ability to work in the United States?" To which the petitioner responded, "Yes, Ma'am." This is clear, unequivocal notice.

The petitioner alleges that because the notice was given at the plea hearing, it should be given no weight. This is simply self-serving rationalization. Numerous important waivers of a defendant's constitutional rights are discussed at plea hearings. To argue that defendants are not capable of listening to and internalizing those discussions flies in the face of American Jurisprudence.


The petitioner further says that "to the extent that the court or the prosecutor phrases the consequences in a reasonably accurate fashion, the defendant cannot know whether by chance to the judge or the state has gotten it right." The State takes this as a concession that the notice given by the State and the Court at the plea hearing was "reasonably accurate," from the petitioner's perspective. Accordingly, even according to the petitioner's current position, he was given notice and chose to proceed with his plea.

Hence, the petitioner's parallels to the Padilla case are poorly framed and the petition should be dismissed in its entirety. Evidentiary hearing on petition is

unnecessary as even making all factual assumptions in favor of the petitioner, the petitioner cannot meet his burden.

DATED this 24th day of October, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney

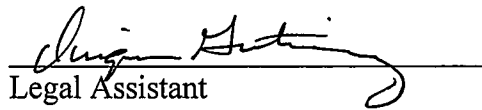
A handwritten signature in black ink, appearing to read "Shawna Dunn", written over a horizontal line.

Shawna Dunn
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2012, I caused a true and correct copy of the foregoing MOTION FOR SUMMARY DISPOSITION to be placed in the United States mail, postage prepaid, addressed to Mr. Keserovic's attorney of record:

Maria Andrade.
P.O. Box 2109
Boise, ID 83701


Legal Assistant

THE STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.) Case No. CR-FE-2012-0000311
)
 HARIS KESEROVIC,)
)
 Defendant.)
)

000061

A P P E A R A N C E S:

FOR THE STATE:

MS. BARBARA DUGGAN
Deputy Prosecuting Attorney
200 West Front Street, Rm. 3191
Boise, Idaho 83702

FOR THE DEFENDANT:

MR. JEFFREY McKINNIE
Attorney at Law
P.O. Box 9469
Boise, Idaho 83702

1 (Proceedings begin.)

2 COURT: Are we ready with Mr. Keserovic?

3 MR. McKINNIE: Yes.

4 COURT: All right. Let's talk up Mr. Keserovic's

5 case. For the record, FE-2012-311. How are we proceeding,

6 Mr. McKinnie?

7 MR. McKINNIE: Judge, we're going to enter a guilty

8 plea to the Rule 11 agreement and just ask you to proceed

9 on the Rule 11.

10 COURT: All right. Is the State amending the

11 current Complaint?

12 MS. DUGGAN: Yes, Judge. In this particular case,

13 I would ask you to, on the Complaint, amend it reducing it

14 to the crime of petit theft. Strike the word "felony."

15 Insert the word "misdemeanor." Then under 18-2407(1)(b),

16 we ask you to strike the (1)(b) and change that to a 2.

17 COURT: And then anything in the body of the

18 Complaint that needs to be changed?

19 MS. DUGGAN: No, Judge. That actually is what

20 occurred so --

21 COURT: All right. All right. Mr. Keserovic, have

22 you had sufficient time to talk to your attorney about

23 entering your plea today?

24 MR. KESEROVIC: Yes, ma'am.

25 COURT: Do you believe that you need to have

1 anymore time to talk to your attorney before the Court
2 accepts your plea?

3 MR. KESEROVIC: No, ma'am.

4 COURT: I've been handed a document entitled
5 "Rule 11 Plea Agreement." I see you have a copy of that
6 document, the pink sheet there in front of you. That
7 document indicates that you are going to be pleading guilty
8 to the charge of petit theft; is that correct?

9 MR. KESEROVIC: Yes, ma'am.

10 COURT: Ms. Duggan.

11 MS. DUGGAN: Judge, I hate to do this to you but
12 prior to accepting the plea of guilty, we just need to make
13 it very clear on the record the State understands a petit
14 theft with 365 days as being what the ICE or the federal
15 government determines to be an aggravated felony even
16 though it is a misdemeanor. It is the State's
17 understanding that this does subject Mr. Keserovic to
18 deportation and so in entering this plea of guilty, we just
19 want it very clear on the record that he recognizes that it
20 does subject him to that potential.

21 COURT: Mr. McKinnie, have you had that discussion
22 with Mr. Keserovic?

23 MR. MCKINNIE: On multiple occasions, Judge. We've
24 talked about the fact that this could raise immigration
25 issues with regard to entering a plea in this case.

1 COURT: So Mr. Keserovic, you understand that by
2 entering a plea of guilty to this charge this morning that
3 it could affect your citizenship, your application for
4 citizenship or your ability to work in the United States?

5 MR. KESEROVIC: Yes, ma'am.

6 COURT: All right. Mr. Keserovic, other than what
7 is contained on that Rule 11 plea agreement, have there
8 been any promises made to you or threats made against you
9 in order to get you to enter a plea today?

10 MR. KESEROVIC: No, ma'am.

11 COURT: Are you under the influence of alcohol,
12 drugs or any prescription medications?

13 MR. KESEROVIC: No, ma'am.

14 COURT: This is your own decision to enter a plea
15 of guilty after having a discussion with your attorney; is
16 that correct?

17 MR. KESEROVIC: Yes, ma'am.

18 COURT: And Mr. Keserovic, you were sitting in the
19 courtroom. Did you hear the Court go over with the
20 previous defendant, the first defendant -- well --

21 MR. KESEROVIC: But I did, yes, hear that.

22 COURT: You heard that. And I apologize but I'm
23 trying to recall that that was Mr. Englet (phonetic) that
24 the Court took up and advised everyone who was appearing
25 before the Court on a Rule 11 that they needed to listen to

1 what rights they were giving up as a result of entering
2 into the Rule 11. You heard that?

3 MR. KESEROVIC: Yes, ma'am.

4 COURT: Have you had a discussion as well with your
5 attorney about what rights you're giving up today by
6 entering into this Rule 11 plea agreement?

7 MR. KESEROVIC: Yes, ma'am.

8 COURT: And you understand that if you enter a plea
9 of guilty to the charge of petit theft that you will not be
10 able to come back to court and challenge either the entry
11 of your plea or the sentence that is being imposed by the
12 Court?

13 MR. KESEROVIC: Yes, ma'am.

14 COURT: And that the Court will treat you as if you
15 are guilty upon your plea of guilty?

16 MR. KESEROVIC: Yes, ma'am.

17 COURT: Mr. Keserovic, the Rule 11 plea agreement
18 indicates that the Court in this case will enter a judgment
19 of conviction on a count of -- one count of petit theft,
20 impose 365 days in the county jail, suspend 305, 60 days to
21 serve with work release if that's available or if you
22 qualify for that through the sheriff's department. The
23 Court will impose a \$1,000 fine, suspend 750 of it, impose
24 court costs of 137.50. Court will require restitution in
25 the amount of \$490 and I understand that -- has that

1 been --

2 MR. McKINNIE: Yeah, I have a check out of my trust
3 account right now.

4 COURT: All right. In addition, the Court will
5 place you on probation for two years. That probation will
6 be consecutive to what your current probation is and that
7 probation will be supervised. The Court will require that
8 you take cognitive self change class. Upon completion of
9 one year of successful probation and having the class done
10 and with your probation officer's approval which means you
11 will have to convince your probation officer that you are a
12 good candidate for unsupervised probation, you can motion
13 the Court to be moved from supervised probation to
14 unsupervised probation.

15 And then the final note that is on the Rule 11 plea
16 agreement is that the jail that the Court imposes today can
17 be served concurrently with whatever present jail you may
18 have to be served in other cases. Is that correct?

19 MR. KESEROVIC: Yes, ma'am.

20 (Discussion held off the record.)

21 COURT: So Mr. Keserovic, what are you currently on
22 probation for?

23 MR. KESEROVIC: Currently -- well, I just got done
24 with one of my cases I closed and I currently am on
25 probation for a battery charge.

1 COURT: Okay. How long is your probation in that
2 case?

3 MR. KESEROVIC: Till September 9 of this year.

4 COURT: So 9/9 of '12?

5 MR. KESEROVIC: Yes, ma'am.

6 COURT: And you were placed on probation in
7 September? Last September?

8 MR. McKINNIE: Judge, if I could help him, he
9 actually just got probation revoked and the remaining
10 sentence imposed by you.

11 COURT: On a PV.

12 MR. McKINNIE: Yes.

13 COURT: Okay.

14 MR. McKINNIE: Yes.

15 COURT: Okay.

16 MR. McKINNIE: So probation is basically over in
17 another case in September and this is going to be
18 consecutive to that so --

19 COURT: Okay. So his probation in this case will
20 begin on 9/10, 2012.

21 MR. McKINNIE: Yes. Yes.

22 COURT: And it will run through 9/10, 2014.

23 MR. McKINNIE: Yes. That's exactly right. That's
24 exactly right. That's correct.

25 COURT: All right. Mr. Keserovic, is that your

1 complete understanding of the agreement, what the Court has
2 recited based on the Rule 11 plea agreement as well as when
3 your probation will start and end in this matter?

4 MR. KESEROVIC: Yes, ma'am.

5 COURT: And Mr. Keserovic, you do understand that
6 you are going to get the sentence that is set out in this
7 Rule 11 plea agreement upon your plea of guilty in this
8 case, correct?

9 MR. KESEROVIC: Yes.

10 COURT: All right. Mr. Keserovic, I have before me
11 a Complaint amended today. That Complaint alleges that on
12 or about the 6th day of January, 2012, in the County of
13 Ada, State of Idaho, you did commit the crime of petit
14 theft, a misdemeanor violation of Idaho Code 18-2403. Do
15 you have any questions about that charge?

16 MR. KESEROVIC: No, ma'am.

17 COURT: As to that allegation, are you entering a
18 plea of guilty or not guilty?

19 MR. KESEROVIC: Guilty, ma'am.

20 COURT: And Mr. McKinnie, do you believe there is a
21 factual basis for Mr. Keserovic's plea?

22 MR. McKINNIE: There is.

23 COURT: All right. Anything the State would like
24 to add, Ms. Duggan?

25 MS. DUGGAN: Did Mr. -- I'd like a factual basis by

1 Mr. Keserovic.

2 COURT: I'm going to ask him for that.

3 MS. DUGGAN: Oh, thank you. Judge, on this date
4 in -- I think it's an appropriate resolution according to
5 Ms. Dunn's request. I believe it took into account all
6 matters. I believe it has been discussed that it subjects
7 him to deportation and so I don't have anything else to add
8 after that.

9 COURT: Mr. McKinnie.

10 MR. MCKINNIE: Yes. Judge, I've been working on
11 this case with Ms. Dunn for a while in this case. I
12 realize the Court's going to ask him a factual basis. I
13 can give you some background.

14 This was a theft that had occurred in Winco. It
15 was all captured on video. It was a purse that was taken
16 out of the victim's shopping cart. Three or four months
17 later, Mr. Keserovic was contacted by the police,
18 voluntarily went down. The person in the video looked
19 exactly like him. There was ample evidence to support that
20 there was a factual basis for it. Mr. Keserovic said it
21 looked like him but he didn't do it.

22 Ms. Dunn and I worked even with his previous
23 employer and took the video -- I guess Shawn (phonetic),
24 the investigator, took the video over to the employers --
25 his previous employers' place. Some of them said it did.

1 Some of them said it didn't. Mr. Keserovic and I talked
2 about this case. Certainly there was enough evidence that
3 he could have been convicted of this. Mr. Keserovic wanted
4 to resolve this case and was willing to plead guilty to the
5 charge as set forth today in this Rule 11 agreement.

6 One of the bases was to pay the restitution up
7 front. It's my understanding that the victim lives in the
8 country of Norway and we are ready to tender a check to
9 that amount and he's got 60 days of jail to do on this case
10 and it's going to subject him to possibly not being able to
11 become a permanent U.S. citizen. He realizes that, the
12 consequences, and we'd just ask that you would accept this
13 Rule 11 plea agreement.

14 COURT: Mr. Keserovic.

15 MR. KESEROVIC: Yes, ma'am.

16 COURT: What would you like to say?

17 MR. KESEROVIC: Your Honor, the detectives said
18 this occurred on November of like this year or something.
19 They went around with some still photos like to my
20 neighbors but nobody ever came to my house. I read the
21 discovery and they said in it that they came to my house
22 and talked to me four or five times. Never once did nobody
23 came to my house.

24 I was contacted by my probation officer and I was
25 told that a detective was asking about me. I asked for his

1 number and I called the detective and I asked him what was
2 going on. He wouldn't tell me over the phone so I told him
3 that I don't feel --

4 (Discussion held off the record.)

5 COURT: I don't mind listening to what Mr.
6 Keserovic would like to say.

7 MR. McKINNIE: Okay.

8 COURT: That's fine.

9 MR. KESEROVIC: When I called the detective, he
10 asked me to come like a week later to talk to them and I
11 said, "No, I would like to come down there right now," and
12 at that time, he told me I could come to the office and
13 talk to him about it. They told me I wasn't under arrest
14 or anything. They let me go.

15 About a week later or so, I was contacted by my
16 probation officer again and asked me to come down to talk
17 to him. I went down there and the detective was there with
18 another officer and they arrested me on a grand theft
19 charge.

20 COURT: Did you talk to your probation officer
21 about whether or not he viewed the video?

22 MR. KESEROVIC: I have not, no.

23 COURT: So you might want to have that conversation
24 because there's an inference here that your probation
25 officer viewed the video and believed that it was you on

1 the video.

2 MR. KESEROVIC: Your Honor, the person in that
3 video resembles me.

4 COURT: Okay. Here's the thing, Mr. Keserovic. I
5 know that you are entering a plea of guilty in this case
6 because you believe that this is the best way to resolve
7 the case to avoid a felony charge.

8 The fact of the matter is that you've indicated to
9 the Court that you are guilty of this charge and you need
10 to proceed accordingly and your resistance to the
11 acceptance of what's happening in this case as a result of
12 the sentencing, that is not going to bode you well on
13 probation.

14 I don't know what's in your head because I
15 understand that you're saying that you didn't do this but
16 if you did do this, Mr. Keserovic, you need to step up to
17 the line and you need to accept it and you need to take it
18 because the fact of the matter is that you've admitted to
19 the Court that you've done it and if in fact you did do it,
20 you need to get over this resistance that you have in your
21 head in denying it because denial in this case is not going
22 to serve you well while you are on probation.

23 You need to come to it and you need to accept that
24 you got caught red-handed and by red-handed meaning a video
25 tape exists of you stealing something out of somebody's

1 cart. That's just the pure facts of the matter.

2 And you believe that that's true enough that you
3 are here today entering a plea of guilty on the charge.
4 You believe that there is sufficient evidence available on
5 that video to show that you are the person in that video
6 doing that act. I'm just telling you that your resistance
7 in coming to it yourself is not going to be something
8 that's going to serve you well while you're on probation.
9 So you need to get past it.

10 I'm going to accept your plea. On that basis, Mr.
11 Keserovic, I'm imposing the sentence that is set out in the
12 Rule 11 plea agreement. Your probation in this case does
13 not start until September 10, 2012. I understand that you
14 currently are on supervised probation. The Court is going
15 to leave open the fact that the State can come back and
16 have this case amended nunc pro tunc, Ms. Duggan, in the
17 event that Mr. Keserovic is released from supervised
18 probation in the other case early so that he goes
19 continuously on supervised probation.

20 I don't want there to be a gap in the supervised
21 probation. So I'm going to leave that open. I don't know
22 whether or not there's a possibility that that will occur.
23 I just simply don't want it to occur because I don't want
24 there to be a gap in probation.

25 But as it stands today, your probation in this case

1 begins September 10, 2012. It will run through September
2 10, 2014. I'm imposing the 60 days of jail. You can set
3 that up with the sheriff's office. Work release is the
4 only option. And again that's concurrent as has been
5 agreed by the parties.

6 MR. McKINNIE: Judge, I think he's got seven days
7 credit on this.

8 COURT: He does? And I apologize. I should have
9 asked for that. I'm not showing that there was an arrest
10 in this case, was there?

11 MR. McKINNIE: Yeah, he got arrested. I actually
12 came and argued in video court.

13 MS. DUGGAN: It looks like he was in court at video
14 arraignment in custody on January 9.

15 COURT: And then I'm not even showing --

16 CLERK: Different order because it came from
17 upstairs so it (inaudible).

18 COURT: The bond. If you could tell me when the
19 bond was posted. So he was arrested September excuse me?
20 I'm sorry.

21 MS. DUGGAN: I show the video arraignment on,
22 excuse me, January 9, 2012.

23 COURT: 1/9. Okay.

24 MS. DUGGAN: And I'll see when he got booked into
25 the jail, if it's a day earlier.

1 COURT: Okay. Do you have the warrant? And he
2 bonded on January 10.

3 MR. McKINNIE: Well, he got arrested the 6th at
4 night and then -- and then was in a video arraignment --

5 COURT: He was arrested January 6 and bonded
6 January 10.

7 MS. DUGGAN: He was. That's what the (inaudible)
8 sheet says.

9 COURT: So I'm showing five days.

10 MR. McKINNIE: Okay.

11 COURT: Is that correct? All right. So that
12 leaves 55 days to serve.

13 All right. Mr. Keserovic, you are being placed on
14 probation in this case. It does require your agreement
15 with the terms and conditions of probation. It's what
16 we've talked about this morning and contained on the
17 judgment form. If you agree with everything that we have
18 talked about, please sign the judgment at the bottom and
19 put your address underneath your name at the top of the
20 form.

21 And how much time do you need to pay those fines
22 and costs? Ten months? Longer?

23 MR. McKINNIE: Yeah. Judge, he's got probably
24 some -- 60-some days left of work release so it would be --

25 COURT: Well, is he working?

1 MR. McKINNIE: Yeah. He's actually --
2 COURT: You're going to be working.
3 MR. McKINNIE: Yeah.
4 COURT: Okay. So is ten months enough or do you
5 need -- ten months is enough. Okay.
6 MR. KESEROVIC: Uh-huh.
7 MR. McKINNIE: Do I make this out to you, all of
8 this?
9 MS. DUGGAN: Yeah. It goes up to -- just take it
10 upstairs and they'll tell you to (inaudible).
11 MR. McKINNIE: Don't put a name in it?
12 MS. DUGGAN: They'll give you a receipt. You need
13 to put a case number on it on your memo line.
14 MR. McKINNIE: Yeah, I've got it on here.
15 MS. DUGGAN: And then they'll give you a receipt.
16 CLERK: Are they not paying restitution
17 (inaudible)?
18 COURT: Well, he can pay it through the court. Did
19 you not want it to go that way?
20 MS. DUGGAN: Oh, no, that's fine.
21 COURT: You can submit that to the clerk
22 downstairs.
23 MS. DUGGAN: Did you order --
24 COURT: It's on the judgment.
25 MS. DUGGAN: Okay.

1 COURT: So you can submit it to the clerk and
2 they'll process it.

3 MR. McKINNIE: Okay. Okay.

4 COURT: It is on that judgment, isn't it?

5 CLERK: (Inaudible) upstairs but it might take a
6 couple minutes to get in (inaudible) the restitution.

7 MR. McKINNIE: So should I take it upstairs or
8 downstairs? Downstairs, okay.

9 COURT: Downstairs. Did I put that on the
10 judgment? I believe that I did. Okay. Great. Thank you.

11 MR. McKINNIE: Thank you.

12 MR. KESEROVIC: Thank you, Judge.

13 COURT: Good luck, Mr. Keserovic.

14 MR. KESEROVIC: Thank you.

15 (Proceedings concluded.)

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STATE OF IDAHO)
) SS
COUNTY OF CANYON)

I, TAMARA A. WEBER, State-certified and licensed
transcriber, do hereby certify:

That the foregoing transcript is a transcript of a
disk made of the proceedings in the matter of State of
Idaho vs. Haris Keserovic, Ada County Case No.
CR-FE-2012-0000311, before the Honorable Theresa Gardunia,
Magistrate of the Magistrate Division of the District Court
of the Fourth Judicial District of the State of Idaho, in
and for the County of Ada; that the foregoing pages 1
through 18 of this transcript contains as accurate and
complete a transcription of said disk as I was able to
make.

IN WITNESS WHEREOF, I have hereunto set my hand
this 23rd day of October, 2012.

____/s/ Tamara A. Weber_____
TAMARA A. WEBER, CSR RMR
Idaho CSR License No. 278
Transcriber

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IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA

Haris KESEROVIC,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent,)
_____)

CASE NO. CV-PC-2012-17517

PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION FOR
SUMMARY DISPOSITION

COMES NOW, Maria Andrade, counsel for the Petitioner, and herein files
Petitioner's Opposition to Respondent's Motion for Summary Disposition.

DISCUSSION

Respondent's motion for summary disposition should be denied for the reasons
set forth herein.

Legal Standard in Summary Dismissal Context.

As the Respondent correctly relays, summary dismissal is permissible "only
when the applicant's evidence has raised no genuine issue of material fact that, if

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY
DISPOSITION (KESEROVIC)

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8/11

resolved in the applicant's favor, would entitle the applicant to the requested relief."

Knutsen v. State, 144 Idaho 433, 437-8, 163 P.3d 222, 226-7 (Ct. App. 2007).

Petitioner's Statement that He Did Not Understand the Immigration Consequences of Pleading Guilty Must Be Presumed to Be True

Petitioner has stated that he did not understand the immigration consequences of pleading guilty to the crime he pled guilty to. *See* Pet'n for Post-Conviction Relief (PCR), at ¶ 22; *see also* Affidavit of Haris Keserovic ("There is no question that I would not admit guilt to the crime if I had known that this conviction would require my deportation."). As a matter of law, in this procedural posture, Petitioner's statements must be deemed true unless they have been rebutted. *Workman v. State*, 144 Idaho 518, 523, 164 P.3d 798, 804 (Idaho 2007); *see also* *King v. State*, 114 Idaho 442, 757 P.2d 705 (Ct.App. 1988). Despite the need to accept the Petitioner's statement as true, Respondent characterizes Petitioner's statement that he did not understand the consequences of pleading guilty as "disingenuous," and then remarkably goes on to claim that it knows better what went on in Petitioner's mind than the Petitioner himself asserting that "he was *in fact* aware of the consequences [of pleading guilty.]" Mot. for Summary Disp., at 4 (emphasis in original). For the purposes of adjudicating the State's motion, it must be taken as true that Mr. Keserovic did not understand that he would be deported if he entered a guilty plea to the charged offense.

Petitioner's Statement that He Did Not Understand the Immigration Consequences of Pleading Guilty Is Inherently Plausible and Evident from a Review of the Record.

Even setting to one side the presumption of truthfulness that this Court *and* the Respondent are to accord Mr. Keserovic's allegations, *Workman v. State*, *supra*,
PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY
DISPOSITION (KESEROVIC)

Petitioner's claim that he did not understand the immigration consequences of pleading guilty is inherently plausible and evident from the record. Petitioner can point to his own trial lawyer's affidavit which reflects that he privately provided incorrect advice about the consequences of pleading guilty. *See* Affidavit of Jeffrey McKinnie.

Furthermore, the transcript of the June 26, 2012 Change of Plea hearing reflects that Mr. McKinnie's on-the-record advice was also flawed: "[the guilty plea is] going to subject him to *possibly* not being able to become a permanent U.S. citizen." Tr. Pg. 11, lns 10-11 (emphasis added).¹ Moreover, the entire discussion surrounding the sentence reflects that the Petitioner, his lawyer, and the presiding judge were all under the impression that Mr. Keserovic would be free to remain in the United States where he would complete his probation and pay applicable fines and costs. *See, e.g.*, Tr. Pg. 15, lns 1-2 (COURT: "[Probation] will run through September 10, 2014"); Tr. Pg. 16, lns 21-24 (COURT: "And how much time do you need to pay those fines and costs? Ten months? Longer?" MR. McKINNIE: "Yeah."); Tr. Pg. 17, lns 2-3 (COURT: "You're going to be working." MR. KESEROVIC: "Yeah."); *see also* Tr. Pg. 5, lns 1-4 (COURT: "So Mr.

¹ Mr. McKinnie's statement about Mr. Keserovic's ability to naturalize does not constitute effective counsel under *Padilla* for two reasons. First, pleading guilty would certainly, not "possibly" renders Mr. Keserovic permanently ineligible to become a U.S. citizen. *See* 8 U.S.C. § 1101(f)(8) (aggravated felony conviction is a permanent bar to "good moral character"); 8 U.S.C. § 1427(d) (good moral character is a requirement for naturalization). Second, effective counsel under *Padilla* requires informing Mr. Keserovic that pleading guilty would cause his deportation—the more severe consequence of Mr. Keserovic's guilty plea. *Id.* at 1486 ("The severity of deportation—the equivalent of banishment or exile,—only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.") (internal citations omitted).

Keserovic, you understand that by entering a plea of guilty to this charge this morning that it *could* affect your *citizenship*, your application for citizenship or your ability to work in the United States.”) (emphasis added), and note 1, *supra*. Reading the transcript, one is left with the unmistakable impression that this group of people did not foresee that Mr. Keserovic was to be routed directly into removal proceedings where he was to be swiftly ordered deported – which is *precisely* the situation *Padilla* seeks to avoid. *Padilla v. Kentucky*, 130 S.Ct. 1473, 1486 (2010). In sum, the record in this case is replete with both circumstantial and direct evidence that Mr. Keserovic genuinely did not understand that pleading guilty to an aggravated felony meant that he would necessarily be deported from the United States. His statement to that effect *is* true and must be presumed by this Court to be true.

Respondent Offers No Argument As To Why The Prosecutor’s Imprecise Warning Can Cure the Prejudicial Incompetence of the Noncitizen Defendant’s Own Lawyer.

Petitioner does not dispute, never has disputed, and indeed could not dispute that the prosecutor stated on the record in front of Mr. Keserovic that the crime he was pleading guilty to is an aggravated felony. What Petitioner disputes is whether the Prosecutor’s warnings -- sometimes correctly stated² and sometimes not³ -- were sufficient to overcome the *Padilla* problem evident in the record. Pet’n for PCR, at 13-19. That is the real question presented by this case, and the Respondent has offered no thoughtful argument on point. The Respondent never addresses Petitioner’s argument that *Padilla*’s obligation falls on defense counsel. The Respondent asserts though never

² See Tr. Pg. 10, lns 6-7.

³ See Tr. Pg. 4, lns 19-20.

explains why the *prosecutor's* sometimes correct and sometimes incorrect advice precluded Mr. Keserovic from "meet[ing] the second prong of *Strickland*." Mot. for Summary Disp., at 4. Petitioner, on the other hand, set forth cogent and detailed arguments in support of the proposition that the prosecutor's statements at the change of plea hearing did not cure the *Padilla* problem. Pet'n for PCR, at 14-19. Respondent meets these arguments with silence.

The Respondent's statement that the Petitioner "conce[ded] that the notice given by the State and the Court at the plea hearing was 'reasonably accurate,'" cannot be taken seriously. Mot. for Summary Disp., at 5. Only by plucking a statement from Mr. Keserovic's PCR Petition and looking at it entirely out of context could the Respondent leap to such a bizarre and unsupportable conclusion. The fact of the matter is that the Court did not advise Mr. Keserovic that a guilty plea would render him necessarily deportable. The Court's advice regarding naturalization, moreover, was both flawed and beyond the scope of *Padilla's* concerns for the reasons stated in footnote one. Tr. Pg. 5, lns 1-4. Concededly, the Prosecutor's statement that "petit theft with 365 days [is] an aggravated felony even though it is a misdemeanor," was correct. Tr. Pg. 4, lns. 14-15; *see also* Pet'n for PCR, at 9-10. But *Padilla* does not require the immigrant to be informed of such arcana – what *Padilla* requires is that, where applicable, the noncitizen is clearly informed that pleading guilty to a particular crime will lead to that individual's deportation. *Padilla v. Kentucky*, 130 S.Ct. 1473, 1486 (2010). The noncitizen defendant's own attorney must inform her client of this fact about before advising the individual to

enter a guilty plea to a particular crime. *Id.* Here, the Prosecutor was less than clear on that dispositive issue: The Prosecutor at once states that the plea subjects Mr. Keserovic to deportation and elsewhere states that the plea subjects Mr. Keserovic "to that potential." Tr. Pg. 4, lns 16-20. Even assuming, *arguendo*, that Mr. Keserovic could rely on the Prosecutor in the least for advice on the immigration consequences of pleading guilty,⁴ well, then, which statement was Mr. Keserovic to believe? Inconsistent advice is no advice at all.

Respondent's Arguments Regarding Possible Alternative Resolutions Are Meritless.

The Respondent attempts to argue that Petitioner cannot show prejudice because he cannot prove that the state would have agreed to a 364 day sentence. Mot. for Summary Disp., at 4. According to Respondent, "Petitioner cannot meet his burden by simply having current counsel guess." *Id.* Respondent's arguments are meritless for two reasons.

First of all, the notion that a post-conviction petition is not the place for speculation about what could have happened in a prior proceeding is simply wrongheaded. *See, e.g., Aragon v. State*, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988). To establish prejudice, *Strickland* holds that "defendant must show that there is a reasonable *probability* that, *but for* counsel's unprofessional errors, the result of the proceeding *would have been different*." *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (emphasis added). It is self-evident that the nature of the "but for" prejudice inquiry is

⁴ For a review of the many reasons why the law should not expect a defendant to do so, see pages 14-19 of Mr. Keserovic's Petition for PCR.

an inherently hypothetical enterprise. As the Court of Appeals has made clear, the "prejudice prong does not require *proof* that counsel's errors definitely would have altered the outcome of the proceedings. Rather, it requires a reasonable *probability* that, but for counsel's inadequate performance, the outcome would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Knutson v. State*, 144 Idaho 433, 443, 163 P.3d 222, 233 (Idaho App. 2007) (internal citations omitted) (emphasis added). Consequently, someone in the position of a petitioner seeking PCR *must* engage in some speculation – albeit intelligent speculation, which brings up Petitioner's second point.

The Petitioner does far more than blindly "guess" that he could have negotiated a one-day reduction in his sentence. Pet'n for PCR, at 12-13. He points to the fact that the State agreed to a reduction from felony to misdemeanor and to a suspension of nearly the entire sentence, evincing its lack of interest in Mr. Keserovic's prolonged incarceration. *Id.* at 13. Moreover, the crime to which Mr. Keserovic pled guilty was not a violent one, Tr. 10, which only further bolsters Mr. Keserovic's claim that getting the prosecutor to agree to a one-day sentence reduction was well within the realm of probability. Finally, it bears remembering what we are talking about here – a reduction in the amount of one single day of a sentence of incarceration that the State did not even insist that Mr. Keserovic serve.

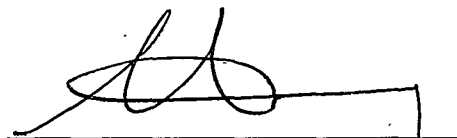
There is every reason to believe an alternative resolution to Mr. Keserovic's criminal case was reasonably probable. Mr. Keserovic states that he was prepared to

take the case to trial and run the associated risks. Aff. of Haris Keserovic. That statement is entitled to a presumption of truth. *King v. State*, 114 Idaho 442, 757 P.2d 705 (Ct.App. 1988). Given what was at stake for Mr. Keserovic (*i.e.* banishment from the United States for the rest of his life), it is fair to assume that he would have agreed to actually serve more time in prison or more time on probation in exchange for a single day sentence reduction. Such a decision would surely have been "rational" under the circumstances. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000); *see also Glover v. United States*, 531 U.S. 198, 203 (2001) (treating as ineffective assistance a sentencing error that results in defendant serving one extra day). These are all factors militating in favor of the conclusion that reaching an alternative agreement -- such as a 364 day sentence -- was reasonably probable.

CONCLUSION

The Respondent has not met its heavy burden required for Summary Disposition and Petitioner has clearly stated grounds upon which relief can be granted. For the reasons set forth above, the Respondent's Motion for Summary Disposition should be denied.

Respectfully submitted this 2nd day of November, 2012.



Maria E. Andrade
Attorney for Haris Keserovic

CERTIFICATE OF SERVICE

I, Maria E. Andrade hereby certify that on November 3rd , 2012 I caused a true and correct copy of the foregoing document to be:

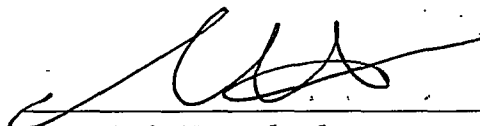
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To:

Ada County Prosecutor's Office
200 West Front Street, Room 3191
Boise, ID 83702



Maria E. Andrade

Filed Tues November 20, 2012 at 09:34 AM

CHRISTOPHER D. RICH, CLERK OF THE COURT

BY 

Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

HARIS KESEROVIC, PLAINTIFF
Plaintiff(s)

VS

STATE OF IDAHO, DEFENDANT
Defendant(s)

CASE NO. CV-PC-2012-17517

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Status Thursday, December 13, 2012 at 11:00 AM

Judge: Theresa Gardunia

Courtroom:

Motion Monday, January 14, 2013 at 03:00 PM

Judge: Theresa Gardunia

Courtroom:

I certify that copies of this Notice were served as follows on Tuesday, November 20, 2012.

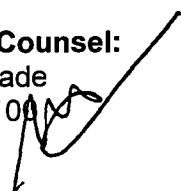
Plaintiff:

Haris Keserovic

Mailed _____ Hand Delivered X Faxed _____

Plaintiff's Counsel:

Maria Andrade

208-342-5100 

Mailed _____ Hand Delivered X Faxed _____

Defendant:

Shawna Dunn


~~interdepartmental~~

Mailed X Hand Delivered X Faxed _____

Gardunia
- Sean
KG - 12/1/12

NO. _____ FILED _____
A.M. 10:04 P.M.

DEC 18 2012

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shawna Dunn
Deputy Prosecuting Attorney
Idaho State Bar No. 5287
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,)	
)	
Petitioner,	)	Case No. CV-PC-2012-17517
)	
vs.	)	MOTION FOR WAIVER OF
	)	ATTORNEY/CLIENT
THE STATE OF IDAHO,	)	PRIVILEGE
)	
Respondent.)	
_____)	

COMES NOW, Shawna Dunn, Deputy Prosecuting Attorney in and for the County of Ada, State of Idaho, and moves this Court for its Order waiving the attorney/client privilege for the reasons stated below.

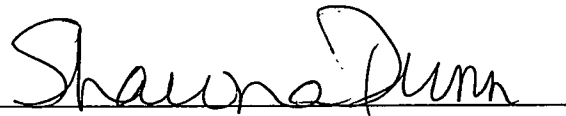
The Petitioner HARIS KESEROVIC has filed a UCPA Petition in this case. The Petitioner raises an ineffective assistance of counsel claim or claims. In the event of a hearing the State will need the ability to speak with handling trial counsel and to review his files, which are subject to the attorney/client privilege. *See* Evidence Rules 502 and

513. Therefore, the State requests that this Court find that the Petitioner has waived the attorney/client privilege for purposes of these post-conviction proceedings, as to all information held by JEFFREY MCKINNIE which is relevant, or which may lead to evidence relevant to the Petitioner's claim of ineffective assistance of counsel.

It is the State's belief that trial counsel would prefer to have an Order from the Court waiving the attorney-client privilege before trial counsel will share privileged information contained in those files.

DATED this 17th day of December, 2012.

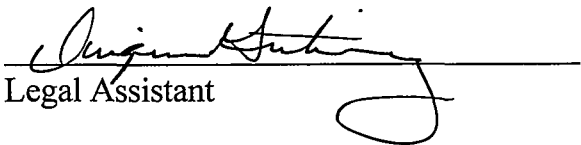
GREG H. BOWER
Ada County Prosecuting Attorney


By: Shawna Dunn
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2012, a true and correct copy of the foregoing Motion for Waiver of Attorney/Client Privilege was served to **Jeffrey McKinnie, P.O. Box 9469, Boise, ID, 83707**, in the manner noted below:

- ☒ *By depositing copies of the same in the United States mail, postage prepaid, first class.*
- ☐ *By depositing copies of the same in the Interdepartmental Mail.*
- ☐ *By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- ☐ *By faxing copies of the same to said attorney(s) at the facsimile number: _____*


Legal Assistant

JAN 28 2013

CHRISTOPHER D. RICH, Clerk
By ANNETTE CAMPBELL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,
Petitioner,
vs.
STATE OF IDAHO,
Respondent

Case No. CV-PC-1217517

**ORDER GRANTING
SUMMARY DISMISSAL
OF POST CONVICTION
MOTION RELIEF**

Defendant filed his Petition for Post-Conviction Relief on September 25, 2012 through his counsel, Maria E. Andrade, in which defendant asserts ineffective assistance of counsel. Defendant complains that counsel in his criminal case failed to adequately advise him of the immigration effects of a plea of guilty to a crime deemed an aggravated felony for purposes of the Immigration and Naturalization Act (INA). On October 25, 2012, the state filed its Motion for Summary Dismissal and Defendant's opposition to the State's Motion was filed on November 5, 2012. The Court, having considered the above, grants the State's Motion based on the following:

Motions for Post-Conviction Relief are civil in nature requiring an applicant to prove, by a preponderance of the evidence, the allegations forming the basis of his Motion. *Murry v. State*, 121 Idaho 918, 921 828 P.2d 1323, 1326 (Ct.App.1992). The Application for Post-Conviction Relief must contain all facts and/or evidence which support Petitioner's claim. Idaho Code § 19-4903. The Court may, upon Motion, summarily dismiss the Petition when the court finds that, "based on the pleadings, depositions, answers to interrogatories, and admissions and agreements

of fact, together with any affidavits submitted that there is no genuine issue of material facts and the moving party is entitled to judgment as a matter of law.” Idaho Code § 19-4906(c).

A claim of ineffective assistance of counsel can form the basis of a Petition for Post-Conviction Relief if evidence provided to support such a claim establishes a genuine issue of material fact that the attorney’s performance was deficient and that but for that performance, the outcome of the case would be different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Defendant’s singular issue in this matter is that his criminal attorney failed to properly advise him that the crime to which he was pleading, although a state misdemeanor, is considered an aggravated felony for purposes of the IMA. Defendant’s criminal attorney has filed an affidavit in this matter and that affidavit supports Defendant’s claim that the attorney failed to properly advise him of the certain deportation consequences of entering a plea to the misdemeanor charge. However, to prevail in a Post-Conviction Relief case, Defendant must also show that his counsel’s deficiency prejudiced him.

Prejudice would indicate that the Defendant was deprived of due process in this matter in that his attorney’s failure to inform him of the immigration consequences of his plea resulted in a plea that was not knowingly, voluntarily or intelligently made. However, the record belies this finding. At a point prior to Defendant’s plea, the state’s attorney interjected the following:

Judge, I hate to do this to you but prior to accepting the plea of guilty, we just need to make it very clear on the record the State understands a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State’s understating that this does subject Mr. Keserovic to deportation and so in entering this plea of guilty, we just want it very clear on the record that it does subject him to that potential. (TR pg. 4, 11-20)

The Court then inquired of Defendant's attorney whether he and the defendant had the (immigration) discussion, to which Defendant's counsel replied:

On multiple occasions, Judge. We've talked about the fact that this could raise immigration issues with regard to entering a plea in this case. (TR pg.4, 23-25)

The Court, addressing Defendant, inquired:

So, Mr. Keserovic, you understand that by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or your ability to work in the United States? (TR pg. 5, 1-4)

To which Defendant replied, "Yes, ma'am" (TR pg.5, 5)

Defendant claims he was prejudiced because *his attorney* did not properly advise him of the immigration consequences of his plea and that the state and court's advisory prior to his plea is insufficient. The court does not find *Padilla* to cut such a fine point. In *Padilla*, there was no immigration advisory at all. Courts nationwide engage in plea colloquies with defendants for the precise reason that the court is not privy to conversations between attorneys and their clients. These inquiries ensure that, notwithstanding previous conversations with counsel, a defendant is aware of what rights he has, what rights he is giving up, and the consequences of a plea. Most importantly, the plea colloquy provides a record that any plea being taken is knowingly, voluntarily and intelligently entered.

Here, a finding that Defendant's criminal attorney's performance was deficient is supported by the record based on the attorney's affidavit attached to Defendant's motion.¹ However, Defendant must still show that but for that deficient performance the result (plea)

¹ The record in this regard is contradictory. At the time of sentencing, Defendant's criminal attorney stated that he and Defendant had conversations regarding immigration issues "on multiple occasions". In his affidavit however, counsel states that he was unaware that the misdemeanor charge was an aggravated felony under INA and therefore would subject Defendant to certain deportation.

would have been different. This the Defendant cannot do. Notice of the consequences of his plea was, according to the record, clearly provided. Whatever deficiency or prejudice existed as a result of Defendant's attorney's performance was cured prior to Defendant entering his plea; therefore his Motion for Post-Conviction Relief is denied.



THERESA GARDUNIA
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2013, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:


Mr. Ralph Blount, Esq.
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, Idaho 83702

___ By United States mail
___ By telefacsimile
___ By personal delivery
___ By overnight mail/Federal Express
☒ By Interoffice Mail

Ms. Maria E. Andrade, Esq.
P.O. Box 2109
Boise, Idaho 83701

☒ By United States mail
☒ By telefacsimile
___ By personal delivery
___ By overnight mail/Federal Express
___ By Interoffice Mail

J. David Navarro
Clerk of the District Court



Deputy Clerk

RECEIVED

FEB 12 2013

Ada County Clerk

Maria E. Andrade
ISB#6445
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

NO. _____
A.M. 9:17 FILED P.M. _____

FEB 12 2013

CHRISTOPHER D. RICH, Clerk
By CHELSIE PINKSTON
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA

Haris KESEROVIC,

Petitioner,

vs.

STATE OF IDAHO,

Respondent,

CASE NO. CV-PC-1217517

**BRIEF IN SUPPORT OF
MOTION REQUESTING
ENTRY OF A FINAL JUDGMENT
OF DISMISSAL**

Petitioner Haris Keserovic, through undersigned counsel, offers this Brief in Support of his Motion Requesting Entry of a Final Judgment of Dismissal of his application for post-conviction relief, pursuant to I.R.C.P. 58(a).

Mr. Keserovic intends to appeal from the summary dismissal of his petition for post-conviction relief. However, no final judgment as required by I.R.C.P. 58(a) has ever been entered by the District Court in this case.

In *Spokane Structures v. Equitable Investment*, 148 Idaho 616, 226 P.3d 1263 (2010), and *T.J.T., Inc. v. Mori*, 148 Idaho 825, 230 P.3d 435 (2010), the Idaho Supreme Court clarified that, pursuant to I.R.C.P. 58(a), a judgment set forth in a separate document must be entered by the District Court prior to appeal. Pursuant to I.R.C.P. 54(a), such a

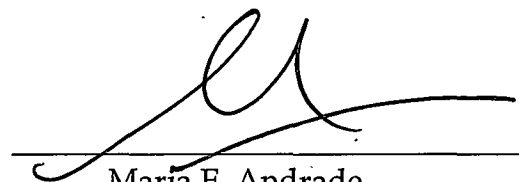
BRIEF IN SUPPORT OF MOTION REQUESTING ENTRY OF A FINAL JUDGMENT OF
DISMISSAL - 1

000097

judgment should state the relief to which a party is entitled, including dismissal with or without prejudice; the judgment should not contain a recital of the pleadings, the record of prior proceedings, the court's legal reasoning, finding of fact, or conclusions of law.

In light of the above, Mr. Keserovic requests that this Court enter a final judgment of dismissal of his application for post-conviction relief.

Respectfully submitted this 8 day of February, 2013.



Maria E. Andrade
Attorney for Petitioner

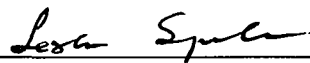
CERTIFICATE OF SERVICE

I, Leszek Szymanski hereby certify that on February 11th, 2013 I caused a true and correct copy of the foregoing document to be delivered by the method indicated:

- ☒ By United States mail
- ☐ By telefacsimile
- ☐ By personal delivery
- ☐ By overnight mail/Federal Express

To:

Mr. Ralph Blount, Esq.
Ada County Prosecuting Attorney's Office
200 West Front Street, Room 3191
Boise, ID 83702



Leszek Szymanski

FEB 22 2013

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
By [Signature] RICH, Clerk
DEPUTY

Haris KESEROVIC,

Petitioner,

vs.

STATE OF IDAHO,

Respondent,

CASE NO. CV-PC-1217517

JUDGMENT OF DISMISSAL

This matter having come before the Court pursuant to the Petitioner's Motion Requesting Entry of a Final Judgment of Dismissal, and having considered its contents, the reasons stated therein, and finding good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petitioner's application for post-conviction relief be, and is hereby, DISMISSED with prejudice.

DATED:

[Signature]
Honorable Theresa Gardunia
Magistrate-Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2013, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:

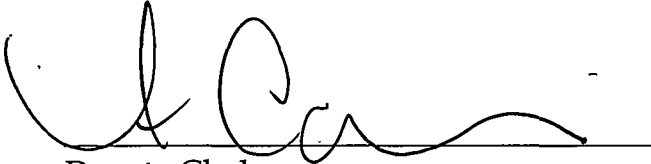
Mr. Ralph Blount, Esq.
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, Idaho 83702

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express
☒ By Interoffice Mail

Ms. Maria E. Andrade, Esq.
P.O. Box 2109
Boise, Idaho 83701

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express
☐ By Interoffice Mail

J. David Navarro
Clerk of the District Court


Deputy Clerk

RECEIVED

MAR 11 2013

Maria F. Andrade
Ada County Clerk
ISB #6445

Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

NO. 1113 FILED
A.M. _____ P.M. _____

MAR 11 2013

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent,

Case No. CV-PC-1217517

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, State of Idaho, AND ITS
ATTORNEY, the Ada County Prosecutor, AND THE CLERK OF THE ABOVE
ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Haris Keserovic, appeals against the
above named Respondent to the Idaho Supreme Court from the final judgment
of dismissal denying Appellant's petition for post-conviction relief, entered in
the above entitled action on the 22nd day of February, 2013, the Honorable
Theresa Gardunia, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal is listed below which the Appellant then intends to assert in the appeal; provided, any such list on appeal shall not prevent the Appellant from asserting other issues on appeal.

- Whether the district court erred by finding that the deficient performance of Mr. Keserovic's trial attorney, who failed to properly advise him of the adverse immigration consequences of pleading guilty to a state misdemeanor in accordance with the rule announced in *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d. 284 (2010), did not materially prejudice Mr. Keserovic because that deficiency was cured by the trial court's plea colloquy prior to the entry of the guilty plea.

4. No order sealing any portion of this record has been issued.

5. Transcript:

(a) Transcript of Change of Plea/Sentencing, June 26, 2012.

Approximately 18 pages. Court reporter: Tamara A. Weber.

6. Clerk's Record:

(a) The standard record.

(b) All uniform citations, complaints, information and indictments from the criminal case.

(c) All written plea agreements from the criminal case.

7. I certify:

(a) That the Appellant is exempt from paying the appellate filing fee because there is no filing fee for post-conviction petitions.

(b) That service has been made upon all parties required to be served pursuant to Rule 20 (and the Attorney General of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 17th day of March, 2013.



Maria E. Andrade
Attorney for the Appellant, Haris Keserovic

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2013, I caused a true and correct copy of the foregoing document to be served to the following:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Blackfoot, Idaho 83702

✓ via U.S. Mail

Kenneth K. Jorgensen,
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

✓ via U.S. Mail

Sara B. Thomas
State Appellate Public Defender
3050 Lake Harbor Ln., Ste. 100
Boise, ID 83703

✓ via U.S. Mail

Leszek Symanski
Leszek Symanski

RECEIVED

MAR 21 2013

Maria E. Andrade
ISB #6445
Andrade Legal **Ada County Clerk**
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

RECEIVED IN TRANSCRIPTS
3-22-13 -lw

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)
)
Petitioner-Appellant,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent,)
_____)

Case No. CV-PC-1217517

NOTICE OF APPEAL

Haris Keserovic hereby gives his notice of appeal. Pursuant to I.C.R. 54.4,
he states as follows:

- (a) Title of action or proceedings: *Haris Keserovic v. State of Idaho.*
- (b) Title of court: Magistrate Court, the Honorable Theresa Gardunia
presiding.
- (c) The number assigned: CV-PC-1217517
- (d) The title of the court to which appeal is taken: District Court for the
Fourth Judicial District.

(e) The date and heading of the judgment from which the appeal is taken:

The judgment of conviction and order of probation entered on June 26, 2012, following the written plea agreement entered that same day.

(f) Statement of basis of appeal: This appeal is taken upon matters of law and fact.

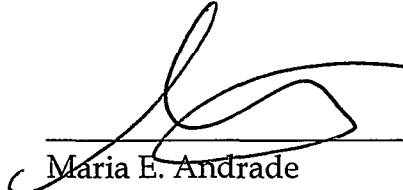
(g) Statement of type of record of proceedings: The proceedings were electronically recorded and said recording is in the possession of the Magistrate Court. Specifically, Mr. Keserovic would request the following transcripts to be prepared: Change of Plea/Sentencing, held on June 26, 2012, in front of Judge Theresa Gardunia.

(h) Certificate of service: The undersigned attorney certifies that this Notice of Appeal has been mailed to counsel for the State of Idaho.

(i) Preliminary Statement of issue to be raise on appeal:

(1) Whether the district court erred by finding that the deficient performance of Mr. Keserovic's trial attorney, who failed to properly advise him of the adverse immigration consequences of pleading guilty to a state misdemeanor in accordance with the rule announced in *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d. 284 (2010), did not materially prejudice Mr. Keserovic because that deficiency was cured by the trial court's plea colloquy prior to the entry of the guilty plea.

Respectfully submitted this 19th day of March, 2013.



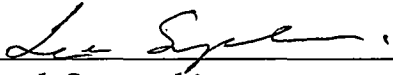
Maria E. Andrade
Attorney for the Appellant, Haris Keserovic

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 2013, I caused a true and correct copy of the foregoing document to be served to the following:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Blackfoot, Idaho 83702

✓ via U.S. Mail


Leszek Symanski

FILED
Friday, March 22, 2013 at 08:20 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY: 

Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

March 22nd, 2013.

HARIS KESEROVIC,
Petitioner-Appellant,
vs.
STATE OF IDAHO,
RESPONDENT.

Case No. CV-PC-2012-17517

NOTICE OF REASSIGNMENT

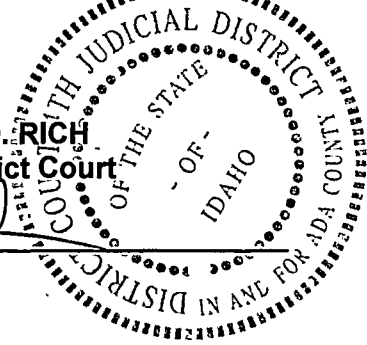
NOTICE IS HEREBY GIVEN That the above-entitled case has been reassigned to
the Honorable MICHAEL MCLAUGHLIN.

DATED Friday, March 22, 2013

CHRISTOPHER D. RICH
Clerk of the District Court

By: 

Deputy Clerk



CERTIFICATE OF MAILING .....	22

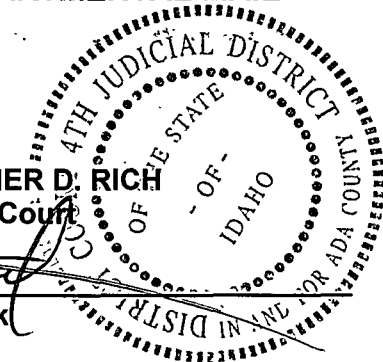
I hereby certify that on Friday, March 22, 2013, I have delivered a true and accurate
copy of the foregoing document to the following parties in the method indicated below:

MARIA E ANDRADE
ATTORNEY AT LAW
PO BOX 2109
BOISE ID 83701

RALPH BLOUNT
ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the Court


Deputy Clerk



MAR 22 2013

CHRISTOPHER D. RICH, Clerk
By RAE ANNE NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,)	
)	
Plaintiff/ Appellant,)	
	)	Case No. CVPC-2012-17517
vs.)	
	)	ESTIMATED COST OF
	)	APPEAL TRANSCRIPT
)	
STATE OF IDAHO,)	
)	
Defendant/ Respondent.)	
_____)	

Notice of Appeal having been filed in the above-entitled matter on **March 21, 2013**, and a copy of said Notice having been received by the Transcription Department on **March 22, 2013**, I certify the estimated cost of preparation of the transcript to be:

Type of Hearing: Appeal
Date of Hearing: June 26, 2012 Judge: Theresa Gardunia
29 Pages x \$3.25 = \$94.25

Pursuant to Idaho Rules of Civil Procedure, Rule 83(k)(1), the appellant must, unless otherwise ordered by a District Judge, pay the estimated fee for the preparation of the transcript within fourteen (14) days after the filing of the Notice of Appeal, and the appellant shall pay the balance of the fee, if any, for the transcript upon completion.

Upon payment of the estimated fees, the transcriber will prepare the transcript and lodge it with the Clerk of the District Court within thirty-five (35) days from the date of the payment of the estimated fees. The transcriber may make application to the District Judge for an extension of time in which to prepare the transcript.

Please make checks payable to: **NICOLE JULSON**, and mail or deliver to the Transcription Department, 200 West Front Street, Room 4172, Boise, Idaho, 83702.

Failure to pay the required fees in a timely manner may be grounds for sanctions as the District Court deems appropriate, which may include DISMISSAL OF THE APPEAL.

Dated this 22ND day of March, 2013.



RAE ANN NIXON
Transcript Coordinator

CERTIFICATE OF MAILING

I certify that on this 22nd day of March, 2013, a true and correct copy of the Estimated Cost of Appeal Transcript was forwarded to Appellant or Appellant's attorney of record, by first class mail, at:

MARIA ANDRADE
ATTORNEY AT LAW
POST OFFICE BOX 2109
BOISE ID 83701



RAE ANN NIXON
Transcript Coordinator

APR 02 2013

CHRISTOPHER D. RICH, Clerk
By AMY LYCAN
Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2012-17517

ORDER GOVERNING
PROCEDURE ON APPEAL

Notice of Appeal having been filed herein, and it appearing that a transcript of all the testimony of the original trial or hearing is required by Appellant to resolve the issues on appeal:

It is ORDERED:

- 1) That Appellant shall order and pay for the estimated cost of the transcript within 14 days after the filing of the notice of appeal.
- 2) That Appellant's brief shall be filed and served on or before June 3rd, 2013.
- 3) That Respondent's brief shall be filed and served on or before July 1st, 2013.
- 4) That Appellant's reply brief, if any, shall be filed and served on or before July 22nd, 2013.
- 5) Oral Argument will be heard at the Ada County Courthouse on August 7th, 2013 at 2:00pm.

Dated this 2nd day of April 2013.



MICHAEL MCLAUGHLIN
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 2nd of April, 2013 I mailed (served) a true and correct copy
of the within instrument to:

MARIA E. ANDRADE
ATTORNEY AT LAW
P.O. BOX 2109
BOISE, ID 83701

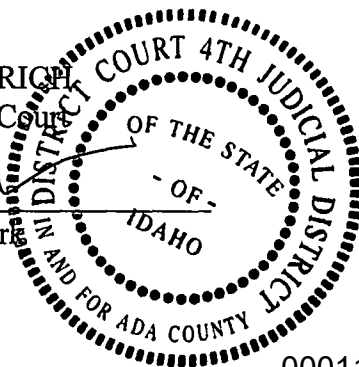
RALPH BLOUNT
ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

ADA COUNTY TRANSCRIPTS DEPARTMENT
INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: 

Deputy Court Clerk



000114

McLoughlin
Mouton
5/10/2013
aw

MAY 09 2013

CHRISTOPHER D. RICH, Clerk
By RAE ANN NIXON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,)	
)	
Plaintiff/ Appellant,	)	Case No. CVPC-2012-17517
)	
vs.	)	NOTICE OF LODGING OF
	)	APPEAL TRANSCRIPT
STATE OF IDAHO,)	
)	
Defendant/ Respondent.)	
_____)	

To: Maria Andrade, Attorney for Appellant.


To: Barbara Duggan, Attorney for Respondent.

PLEASE TAKE NOTICE THAT a transcript of the proceeding in this action was lodged with the Court on **May 9, 2013**.

YOU ARE NOTIFIED that you may pick up a copy of said transcript at the District Clerk's Office, Ada County Courthouse, 200 West Front Street, Boise, ID 83702.

Unless objections to the content of the transcript are received within twenty-one (21) days from the date of mailing of this notice, such transcript shall be deemed settled.

Date this 9TH day of May, 2013.




RAE ANN NIXON
Deputy Clerk of the District Court

I hereby certify that on this 9TH day of May, 2013, a true and correct copy of the Notice of Lodging was sent via US Mail to:

ADA CO. PROSECUTING ATTORNEY
200 W. FRONT ST. STE. 3191
BOISE, ID 83702
BARBARA DUGGAN

MARIA ANDRADE
ATTORNEY AT LAW
POST OFFICE BOX 2109
BOISE ID 83701



RAE ANN NIXON

Deputy Clerk of the District Court

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB #5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

NO. _____ FILED _____ 147
A.M. _____ P.M. _____

MAY 29 2013

CHRISTOPHER D. RICH, Clerk
By DAYSHA OSBORN
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	MOTION TO WITHDRAWAL
	)	APPELLANT'S ATTORNEY,
STATE OF IDAHO,	)	APPOINT THE ADA COUNTY
	)	PUBLIC DEFENDER AND FOR
Respondent,	)	EXTENSION OF TIME TO FILE
_____	)	APPELLANT'S BRIEF

COMES NOW A. Denise Penton, on behalf of Andrade Legal, counsel for the Petitioner-Appellant, and herein moves this Court for an order allowing Petitioner-Appellant's attorney to withdraw as counsel of record, an order appointing the State Appellate Public Defender, and for an order extending time to file Appellant's Brief in this matter.

MEMORANDUM OF LAW

The Appellant's right to review of a final judgment by the Idaho District Court is provided for by statute. I.C. § 19-4909.

Where the Petitioner-Appellant is unable to pay the expenses of representation and legal services, a court-appointed attorney may be made available to the applicant on appeal. Idaho Code § 19-4904.

The Defendant is a “needy person” as defined in Idaho Code § 19-851(c) and is unable to provide for full payment of an attorney and all other expenses of representation.

Petitioner-Appellant in support of the motion states as follows:

FACTUAL BASIS

1. The Petitioner-Appellant argues that he was denied constitutionally effective counsel by his defense attorney’s failure to properly advise him of the immigration consequences of his guilty plea as required by *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d. 284 (2010), and that the error was not, and cannot be, remedied by anyone other than his defense attorney.
2. The Petitioner-Appellant is indigent, and otherwise a “needy person” as defined by Idaho Code § 19-851(c).
3. The Petitioner-Appellant was deported in January of 2013 after being taken into custody on September 10, 2012 by Immigration and Customs Enforcement (ICE). He currently resides in Velika Kladusa, Bosnia, is unemployed, and survives on the support he receives from his family here in the United States.

4. The Petitioner had hired the undersigned attorney to represent him in his post-conviction proceedings before the Magistrate Court. However, the Petitioner and his family do not have the financial resources to continue to retain the services of the undersigned lawyer or enter into any good faith payment arrangements that would permit the Petitioner to retain the services of the undersigned attorney. To the knowledge of the undersigned counsel, the Petitioner does not have a telephone. The undersigned counsel's firm has been unable to contact the Petitioner to obtain a full financial affidavit at the time of filing this Motion.
5. The Appellant's Brief is due to this court by June 3, 2013. As part of it motion to appoint the Ada County Public Defender, the Appellant asks that this Court also grant an extension of the filing deadline to allow adjudication of this motion and provide sufficient time for the preparation of the opening brief in the event that this motion is granted.

ARGUMENT

Mr. Keserovic is a needy person as defined by the Idaho Code. He is not currently employed and has no means of financial support other than to rely on the good will of his family. He was recently deported to Bosnia after having come to the United States as a child refugee in 1998. Prior to his deportation, he was held in the custody of Immigration and Customs Enforcement for

MOTION FOR WITHDRAWAL OF APPELLANT'S ATTORNEY AND
APPOINTMENT OF THE STATE APPELLATE PUBLIC DEFENDER —3

approximately four months, during which time he was unable to work or provide a means of financial support.

Because the Petitioner-Appellant is unable to pay the expenses of representation and legal services, a court-appointed attorney should be made available to the Petitioner-Appellant on appeal.

WHEREFORE, the Petitioner-Appellant prays this Court grant Petitioner-Appellant's Motion for Withdrawal of Petitioner-Appellant's Attorney and Appointment of the State Appellate Public Defender as well as the Motion to extending time to file Appellant's Brief in this matter.

Respectfully submitted this 29 day of May, 2013.



A. Denise Penton
Attorney, Andrade Legal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 2013, I caused a true and accurate copy of the foregoing document to be served on the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Sara B. Thomas
State Appellate Public Defender
3050 N. Lake Harbor Ln., Ste. 100
Boise, ID 83702

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 29 day of May, 2013.



A. Denise Penton

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

NO. _____
A.M. _____ FILED P.M. 147

MAY 29 2013

CHRISTOPHER D. RICH, Clerk
By DAYSHA OSBORN
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA .

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	AFFIDAVIT IN SUPPORT OF
	)	MOTION TO WITHDRAW AS
	)	APPELLANT'S ATTORNEY,
STATE OF IDAHO,	)	APPOINT THE ADA COUNTY
	)	PUBLIC DEFENDER AND FOR
Respondent,	)	EXTENSION OF TIME TO FILE
_____	)	APPELLANT'S BRIEF

Comes now A. Denise Penton, Managing Attorney for Andrade Legal and submits this Affidavit In Support Of Respondent's Motion to Withdraw as Appellant's Attorney, To Appointment of State Appellate Public Defender and for an Extension of Time to File Appellant's Brief.

I, A. Denise Penton, hereby swear and affirm the following to be true and correct to the best of my knowledge and belief:

1. I am the Managing Attorney for Andrade Legal.
2. As part of my duties, I ensure clients comply with their financial obligations to Andrade Legal as well as those who have agreed to pay for legal services on behalf of our clients.

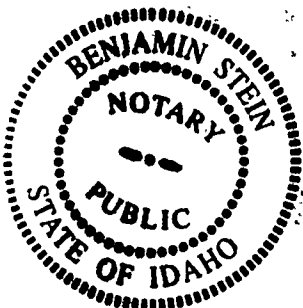
3. Beginning in April, 2013, I sent several letters regarding the financial obligations required for Andrade Legal to represent Mr. Keserovic in the Post-Conviction Relief action as well as the potential appeal.
4. As of the date of the signing of this affidavit, no payments have been made on his account since January 4, 2013 and his account has had a balance due since November 2012.
5. It has been my observation that clients pay their outstanding balances when our office is regularly communicating with the client regarding issues related to their case and during the months hearings are schedule in their cases.
6. I have no direct knowledge of the reason behind Mr. Keserovic's outstanding balance or the length of time since the last payment has been made on his balance.
7. However, I offer this information in support of the Motions filed with the court because a reasonable inference can be drawn from the payment history and the length of time the account has had an outstanding balance. That inference is that Mr. Keserovic is unable to pay our fee nor is his family able to make payment.

Dated this 29 day of May, 2013.

By: [Signature]
A. Denise Penton

State of Idaho)
) ss
County of ADA)

Subscribed and sworn before me this 29 day of May, 2013.



By: [Signature]
(Official Signature and Seal)
Notary Public: Benjamin Stein
Residing at: Idaho
My commission expires: 3/11/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 2013, I caused a true and accurate copy of the foregoing document to be served on the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

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☐ By personal delivery
☐ By overnight mail/FedEx
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Sara B. Thomas
State Appellate Public Defender
3050 N. Lake Harbor Ln., Ste. 100
Boise, ID 83703

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 29 day of May, 2013.



A. Denise Penton

Appeals
5/30/13
Sh

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

NO. _____ FILED _____
A.M. _____ P.M. 147

MAY 29 2013

CHRISTOPHER D. RICH, Clerk
By DAYSHA OSBORN
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	AFFIDAVIT IN SUPPORT OF
	)	MOTION TO WITHDRAW
	)	APPELLANT'S ATTORNEY,
STATE OF IDAHO,	)	APPOINT THE ADA COUNTY
	)	PUBLIC DEFENDER AND FOR
Respondent,	)	EXTENSION OF TIME TO FILE
_____	)	APPELLANT'S BRIEF

Comes now Nathaniel Damren, Associate Attorney with Andrade Legal, and files this Affidavit In Support Of Respondent's Motion To Withdraw As Appellant's Attorney, To Appointment Of State Appellate Public Defender And For An Extension Of Time To File Appellant's Brief.

I, Nathaniel Damren, hereby swear and state the following to be true and correct to the best of my knowledge and belief:

1. My name is Nathaniel Damren. I am a lawyer licensed to practice law in the State of Illinois (Bar No. 6307746). I have been working as an associate attorney with Andrade Legal in Boise, Idaho, since December 6, 2012. My practice is in immigration law in the federal courts of the Ninth Circuit.
2. I have knowledge of the facts regarding Mr. Haris Keserovic's financial matters as I am one of the attorneys assigned to handle his case and have communicated directly and indirectly with Mr. Keserovic regarding his legal representation as well as financial matters related to his representation.

3. Mr. Keserovic hired our office on August 9, 2012, in order to file a Post-Conviction Relief action after entering a guilty plea to the misdemeanor charge of Petit Theft, in violation of Idaho Code § 18-2407(2), on June 26, 2012. On September 10, 2012, Immigration and Customs Enforcement (ICE) assumed custody of Mr. Keserovic. He remained in the custody of ICE until he was deported in January 2013.
4. Good cause exists to file an appeal of the issues raised in the Post-Conviction Relief action.
5. Mr. Keserovic initially came to the United States as a refugee in 1998, when he was approximately 12 years old.
6. Mr. Keserovic presently resides in the city of Velika Kladuša in Bosnia. As of April 2013, he was unemployed and relying on the good will of his family in the U.S. for support.
7. It is difficult to get in touch with Mr. Keserovic because he now resides in Bosnia and does not have a fixed telephone number. At this moment, our office only has his mailing address in Bosnia, and we have been unable to communicate with him to obtain an affidavit regarding his financial situation in support of the present motion.
8. As part of the regularly conducted operations of our office, we utilize paralegals to communicate with our clients regarding numerous issues to help with work flow and to reduce the cost of services to our client.
9. On April 10, 2013, I asked the paralegal assigned to the case, Leszek Szymanski, to gather information regarding the living and financial conditions of Mr. Keserovic after he was deported to Bosnia.
10. Mr. Szymanski was able to obtain information regarding Mr. Keserovic's financial and living conditions from Mr. Keserovic's relatives.
11. While Mr. Keserovic was in the U.S. and employed, he was unable to afford the services of a private attorney. However, his family, while not obligated to do so as Mr. Keserovic is over 18, paid for our services. They are unable to provide additional funds at this time.
12. Mr. Szymanski is on vacation out of the country and will not return until June 6, 2013. He is therefore unavailable to provide an affidavit in support of the present motion. However, attached is a true and correct copy of an email I

received from Mr. Szymanski regarding Mr. Keserovic's financial situation. See Exhibit A. This communication was made at or near the time he was able to communicate with Mr. Keserovic and is kept in the course of regularly conducted business activity. It is the practice of our office to regularly keep such communications as part of our records and client files.

13. It is typical of immigration law that our clients frequently communicate information about their situation via relatives who speak English or help support their legal efforts. Our clients are often out of the country, in the custody of ICE, speak limited English, or are otherwise difficult to get in touch with.
14. It is my intention to provide as much information as possible to help the Court verify that the circumstances under which we obtained the information regarding Mr. Keserovic's financial situation are trustworthy, are the most probative information we can offer regarding the need for a public defender for Mr. Keserovic under the circumstances with which we presently able to communicate with him, and that the provision of this information will serve the interest of justice.
15. It is my belief, after the course of the communications our office has had with Mr. Keserovic and his family regarding his financial situation prior to his deportation and after, that he is unable to afford the services of a private attorney and would be eligible for representation by a public defender.

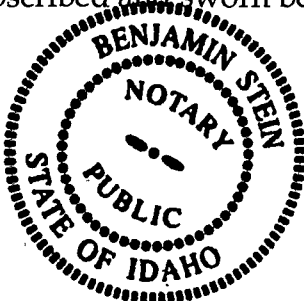
I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and ability.


Dated this 29th day of May, 2013.

By: 
Nathaniel Damren

State of Idaho)
) ss
County of ADA)

Subscribed and sworn before me this 29th day of May, 2013.



By: 
(Official Signature and Seal)
Notary Public: Benjamin Stein
Residing at: Idaho
My commission expires: 3/11/2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of May, 2013, I caused a true and accurate copy of the foregoing document to be served on the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Sara B. Thomas
State Appellate Public Defender
3050 N. Lake Harbor Ln., Ste. 100
Boise, ID 83703

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 29 day of May, 2013.



A. Denise Penton

Nathaniel Damren

From: Leszek Szymanski
Sent: Wednesday, April 10, 2013 11:52 AM
To: Nathaniel Damren
Subject: RE: KESEROVIC, Haris - questions re indigency

From: Nathaniel Damren
Sent: Wednesday, April 10, 2013 11:36 AM
To: Leszek Szymanski
Subject: KESEROVIC, Haris - questions re indigency

Hey Leszek,

Can you answer the following questions for me and/or give either Keserovic or his people a call and found out the answers:

(1) Where does Haris live now? Bosnia? Where in Bosnia?

"Velika-Kladusa, Bosnia"

(2) What does Haris do for employment now? Approximately how much money does he earn?

"Unemployed. He receives support from his family in the US"

(3) Does Haris have savings? What is his present net worth?

"Only a car, they're not aware of any savings, probably none"

(4) What did Haris do for employment while here in Idaho? Approximately how much money did he earn before his incarceration/deportation?

"He used to work at Clearview Cleaning, Floor buffer, Also at KFC and Jack in the box Approx. 11 or 12 / hour"

Thanks!
Nat

Appeals
5/31/13
Sk

NO. _____
FILED
A.M. _____ P.M. 3:05

MAY 30 2013

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA

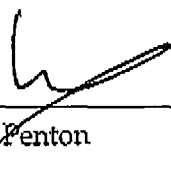
HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	CERTIFICATE OF SERVICE
)	
STATE OF IDAHO,)	
)	
Respondent,)	
_____)	

I HEREBY CERTIFY that on this 30th day of May, 2013, I caused a true and accurate copy of the Affidavit in Support of Motion to Withdraw as Appellant's Attorney, Appoint the Ada County Public Defender, and for Extension of Time to File Appellant's Brief to be served on the persons identified below by the method indicated:

Alan Trimming
Ada County Public Defender
200 W. Front St.
Boise, ID 83702
Fax: (208) 287-7409

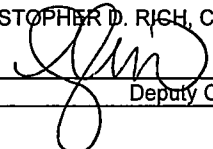
☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 30th day of May, 2013.



A. Denise Penton

ORIGINAL ¹
000131

FILED
Monday, June 03, 2013 at 02:58 PM
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: 
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC, PLAINTIFF
Plaintiff(s)

VS

STATE OF IDAHO, DEFENDANT
Defendant(s)

CASE NO. CV-PC-2012-17517

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion Hearing **Wednesday, June 26, 2013**

At: **04:00 PM**

Judge: **Michael McLaughlin**

ADA COUNTY COURTHOUSE 200 W. Front Street, Boise, Idaho

I certify that copies of this Notice were served by US Mail as follows on Monday, June 03, 2013.

Maria E Andrade
PO Box 2109
Boise ID 83701

Sara B. Thomas
State Appellate Public Defender
3050 Lake Harbor Ln Ste 100
Boise, Id 83703

Kenneth K Jorgensen
Deputy Attorney General
Criminal Law Division
PO Box 83720
Boise ID 83720-0010

Dated: Monday, June 03, 2013

CHRISTOPHER D. RICH
Clerk of the Court

By: 
Deputy Clerk

FILED
Thursday, June 06, 2013 at 09:43 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: J. Weatherly
Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

HARIS KESEROVIC,
Plaintiff,

Vs.

STATE OF IDAHO,
Defendant.

)
) Case No: CV-PC-12-17517
)

) **AMENDED NOTICE OF HEARING**
)
)

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Motion Hearing

Wednesday, June 26, 2013

04:00 PM

Judge:

Michael McLaughlin

ADA COUNTY COURTHOUSE 200 W. Front Street, Boise, Idaho

I certify that copies of this Notice were served as follows on June 6, 2013.

**MARIA E. ANDRADE
ATTORNEY AT LAW
FAX: 342-5101**

*busy signed:
mailed to PO Box 2109
Boise 83701*

**ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL**

Dated: Thursday, June 06, 2013

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Clerk

NOTICE OF HEARING
Court Reference CV-PC-2012-17517

000133

JUN 07 2013

CHRISTOPHER D. RICH, Clerk
By **AMY LYCAN**
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

Case No. CV-PC-2012-17517

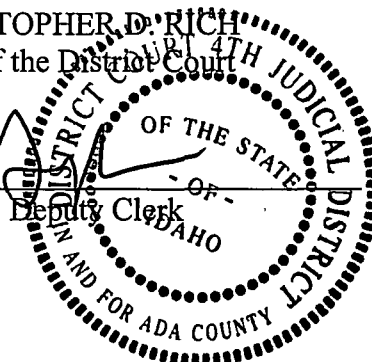
**NOTICE OF FILING
TRANSCRIPT ON APPEAL**

Pursuant to I.R.C.P. 83(p), the transcript of the proceedings dated June 26th, 2012, is now filed.

Dated this 7th day of June 2013.

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____



CERTIFICATE OF MAILING

I hereby certify that on this 7th day of June 2013, I mailed (served) a true and correct copy of the
within instrument to:

Maria E. Andrade
P.O. Box 2109
Boise, ID 83701

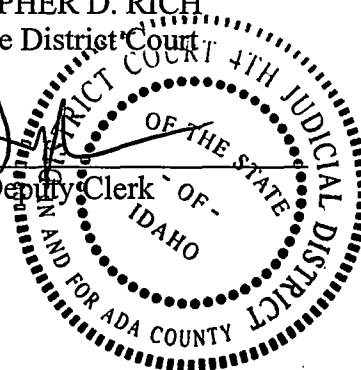
Ada County Prosecutor
Interdepartmental Mail

ADA COUNTY TRANSCRIPTS DEPARTMENT
VIA: INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____

Deputy Clerk of
IDAHO



JUN 12 2013

CHRISTOPHER D. RICH, Clerk
By CHELSIE PINKSTON
DEPUTY

Maria E. Andrade
ISB #6445
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-12-17517
)	
vs.	)	CERTIFICATE OF SERVICE
)	
STATE OF IDAHO,)	
)	
Respondent,)	
_____)	

I HEREBY CERTIFY that on this 12 day of June, 2013, I caused a true and accurate copy of the of Motion to Reset Date to be served on the persons identified below by the method indicated:

Alan Trimming
Ada County Public Defender
200 W. Front St.
Boise, ID 83702
Fax: (208) 287-7409

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 12 day of June, 2013.

Leszek Szymanski
Leszek Szymanski

TIME RECEIVED
June 12, 2013 4:08:42 PM MDT

REMOTE CSID

DURATION
41

PAGES
2

STATUS
Received

NO. _____
A.M. _____ FILED P.M. S

JUN 12 2013

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By CHELSE PINKSTON
DEPUTY

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,
Respondent,

Case No. CV-PC-12-17517

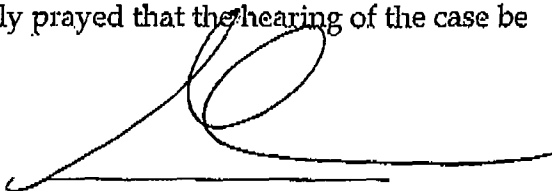
MOTION TO RESET HEARING
DATE

Petitioner, through the undersigned counsel and to this Honorable Court respectfully states that:

1. The hearing of this case has been set for June 26, 2013 at 4:00 PM;
2. However, the undersigned counsel hereby regretfully informs the Honorable Court that she cannot attend said hearing due to the previously scheduled engagement. Specifically, the undersigned counsel will be at the American Immigration Lawyer's Association Annual conference in San Francisco from June 26-June 30 and has already purchased airline travel and lodging;
3. The undersigned is constrained to respectfully request the Honorable Court to reset the hearing for any of the following dates in July: 1 before 1:00 PM or after 2:30 PM, July 3, before 10:00 AM or after 11:30 AM, July 5 anytime, July 8 anytime, and July 10-12 anytime;
4. This motion is made in good faith and not intended to delay the proceedings of the case.

Based upon the above, it is respectfully prayed that the hearing of the case be reset to another date.

Submitted June 12, 2013.

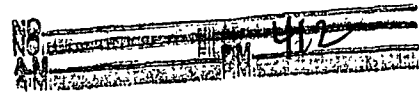

Maria E. Andrade

MOTION TO RESET HEARING DATE—1

000137
ORIGINAL

ORIGINAL

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101



JUN 25 2013

CHRISTOPHER D. RICH, Clerk
By RICH NELSON
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)

Petitioner-Appellant,)

vs.)

STATE OF IDAHO,)

Respondent,)

Case No. CV-PC-2012-17517

FINANCIAL AFFIDAVIT
OF HARIS KESEROVIC

IDENTIFICATION AND RESIDENCE:

Name: Harris KESEROVIC Other name(s) I have used: _____

Address: Polje 97, 77230 Velika Kladusa

How long at that address? February 2013 Phone: _____

Date and place of birth: [REDACTED]

Education completed (years): _____

FAMILY:

Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed ☐ Separated

The following minor children live with me:

Name	Age	Relationship	Child Support Received (\$/month)
------	-----	--------------	-----------------------------------

N/A

EMPLOYMENT:

Occupation: N/A Employed by: _____

Position: _____ Salary: \$ _____ or \$ _____ per hour

Monthly gross income \$ _____. If your current position is temporary what are the start and end dates? _____

Phone number to use to verify: _____ If you have held this job less than one year, previous employer: _____

Phone number to use to verify: _____

Spouse's Occupation: _____ Employed by: _____

Position: _____ Salary: \$ _____ or \$ _____ per hour

Monthly gross income \$ _____. If your spouse's current position is temporary what are the start and end dates? _____

I receive assistance or support from the following sources and in the following monthly amounts:

Spouse: \$ N/A Welfare: \$ _____ Food Stamps: \$ _____ Relatives: \$250/Month

Unemployment Compensation: \$ N/A Social Security: \$ _____ Retirement: \$ _____

Former Spouse: \$ _____ Other (identify) _____ \$ _____

If unemployed, how long since your last regular employment? _____

List all places where you have applied for work in the last six months:

Company	Last Applied	Reason for Rejection
---------	--------------	----------------------

<u>N/A</u>		

Are you willing to work now? YES What work can you do? _____

What is the minimum wage for which you are willing to work? \$ ANYTHING

List all employers you worked for during the last three years.

Company	Date Terminated	Ending Salary	Reason for Termination
---------	-----------------	---------------	------------------------

DISHWASHER			
------------	--	--	--

Are you capable of working now? ☒ Yes ☐ No If no, why not? _____

If a health problem keeps you from working, provide the name of your treating doctor: _____

_____. Is your health problem permanent? ☐ Yes ☒ No

When will you be released to work? _____

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Address	City	State	Legal Description	Value	Your Equity
N/A					

List all other property owned by you and state its value.

Description (provide description for each item)

Value	
Cash	NO
Notes and Receivable	NO
Vehicles	NO
Bank/Credit Union/Savings/Checking Accounts	NO
Stocks/Bonds/Investments/Certificates of Deposit	NO
Trust Funds	NO
Retirement Accounts/IRAs/401(k)s	NO
Cash Value Insurance	NO
Motorcycles/Boats/RVs/Snowmobiles	NO
Furniture/Appliances	NO
Jewelry/Antiques/Collectibles	NO
TVs/Stereos/Computers/Electronics	NO
Tools/Equipment	NO
Sporting Goods/Guns	NO
Horses/Livestock/Tack	NO
Other (describe)	N/A

EXPENSES: List all of your monthly expenses

Expense	Average Monthly Payment
Rent/House Payment	\$ 100
Vehicle Payment(s)	0
Credit Cards (list last 4 digits of each account number)	
	\$2 -3000
Loans (name of lender and reason for loan)	
Electricity/Natural Gas	\$25
Water/Sewer/Trash	\$25
Phone	
Cellular Phone	
Cable/Satellite TV/Internet	
Groceries	\$100
Dining Out	
Clothing	
Auto Fuel/Transportation	
Auto Maintenance	
Cosmetics/Haircuts/Salons	
Entertainment/Books/Magazines	
Home Insurance	
Auto Insurance	
Life Insurance	

Expense (continued)	Average Monthly Payment
Medical Insurance_____	N/A
Medical Expense_____	_____
Child Care_____	_____
Other (describe) _____	_____
_____	_____
_____	_____

MISCELLANEOUS:

How much can you borrow? \$ 0. My parents provide financial support.

_____ From whom? _____ When did you file your last
income tax return? _____ Amount of refund: \$ _____

PERSONAL REFERENCES: (These persons must be able to verify information provided.)

Name	Address	Phone	Years Known
Adis KESEROVIC	- Brother	Boise, ID	
_____	_____	_____	_____
_____	_____	_____	_____

Typed/printed

Signature

STATE OF IDAHO)
) ss.
County of _____)

SUBSCRIBED AND SWORN before me on this _____ day of _____

Notary Public for Idaho

Residing at _____

Commission expires _____

Appeals
Stichler/Mclaughlin
6/26/13
sa

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

ORIGINAL

NR
AM
FILED
JUN 25 2013
11:12

JUN 25 2013

CHRISTOPHER D. RICH, Clerk
By RIG NELSON
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	SECOND AFFIDAVIT OF A. DENISE
	)	PENTON IN SUPPORT OF MOTION
)	
STATE OF IDAHO,)	
)	
Respondent,)	
_____)	

Comes now A. Denise Penton, Managing Attorney for Andrade Legal and submits this Second Affidavit In Support Of Respondent's Motion to Withdraw as Appellant's Attorney, To Appointment of State Appellate Public Defender and for an Extension of Time to File Appellant's Brief.

I, A. Denise Penton, hereby swear and affirm the following to be true and correct to the best of my knowledge and belief:

1. I am the Managing Attorney for Andrade Legal.
2. I had an opportunity to talk to Mr. Keserovic on Monday June 24 2013 over the phone. He stated he was calling me from a friend's phone on the street of the city where he lived and was trying to stay where he had access to Wi-Fi.

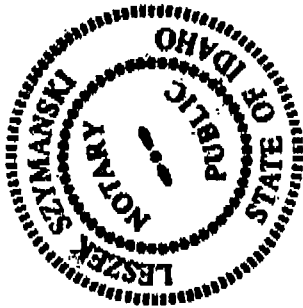
3. I asked Mr. Keserovic what his financial status was. Mr. Keserovic stated Bosnia has a high level of unemployment. He has tried to look for a job, but there are no jobs available. He has signed up with employment agencies, however is not hopeful that he will be able to find a job in that manner.
4. He indicates he has no source of income. The only money he receives to support himself is approximately \$250 per month from his father. With that money, he pays \$100 per month in rent, \$50 in utilities and \$100 for food. After that money is gone, he has nothing left to cover any expenses in any form. In his own words, he is "broke for another 3-4 weeks." Attached as Exhibit A are documents evidencing financial support provided to Mr. Keserovic by his brother, Adis Keserovic, who has been communicating with our office on behalf of Mr. Keserovic.
5. In aid of this Motion, I asked Mr. Keserovic to provide the information contained in the financial affidavit attached as Exhibit B to this Affidavit. While Mr. Keserovic is not in a position sign the affidavit included as an exhibit, he was able to provide the information contained in Exhibit B and the other facts presented herein.
6. It is extremely difficult to get documents to communicate with Mr. Keserovic due to the fact that he lives in another country, has limited access to electronic media that allow us to get documents quickly and we receive most of our information regarding Mr. Keserovic from family members who are able to coordinate communication with him more frequently.
7. With regard to the legal issues raised before the court under *Padilla v. Kentucky*, 130 S. Ct. 1473, 176 L. Ed. 2d. 284 (2010). Our office is tracking *Padilla* cases both locally and nationwide. The case law is new, there are very few cases in Idaho, and they include this one, in which this issue has been raised and there are no decisions at the appeals court level or higher which give any guidance on how *Padilla* affects cases such as this one, where there was clearly ineffective assistance of counsel. This is essentially a case of first impression.

Dated this 25 day of July, 2013.

By: 
A. Denise Penton

State of Idaho)
) ss
County of ADA)

Subscribed and sworn before me this 25 day of June, 2013.



By: Leszek Szymanski

(Official Signature and Seal)

Notary Public:

Residing at:

My commission expires: 2/28/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of June, 2013, I caused a true and accurate copy of the foregoing document to be served on the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box


Alan Trimming
ADA COUNTY PUBLIC DEFENDER
200 West Front Street
Boise, ID 83702
Fax: 208-287-7409

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

☐ By United States mail
☒ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 25 day of June, 2013.



A. Denise Penton

CUSTOMER RECEIPT

Transfer Confirmation/
confirmación de envío

Money Transfer Send/
Transferencia de Dinero

OPT TO 890 05 16 2013 09:00 AM MST

MTCN : 061-708-3699

Agent Address: FRED MEYER #08439
10751 W OVERLAND
RD, 10, BIRMGHAM, USA

Sender/Remittente:
MENHO KESEROVIC

Receiver/Beneficiario:
HARIS KESEROVIC

Reported Payout Location/
Lugar donde se espera pagar
Bosnia and Herzegovina

Amount /Cantidad:	100.00
Fee /Fee /Tarifa	15.00
Delivery/Kilopaga:	0.00
Doc. Fee/Mensajes:	
Tax /Impuesto:	0.00
TOTAL /MONTOS:	115.00

Amount to be paid/ Cantidad a Pagar:
100.00 US Dollar
Exchange Rate . 1.0000

Delivery Service /Servicio de Envio:
MONEY IN MINUTES

We value your opinion! Go to
westernunion.com/listens to tell us
about our service. Survey code:
0617083699

IN ADDITION TO THE TRANSFER FEE,
WESTERN UNION ALSO MAKES MONEY
WHEN IT CHARGES YOUR DOLLARS INT
FOREIGN CURRENCY. PLEASE SEE
REVERSE SIDE FOR MORE INFORMATION
REGARDING CURRENCY EXCHANGE. IF
THE EXCHANGE RATE FOR YOU

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN UNION



Already a Gold Card or My WU® Member? You don't need a form! Just speak with the Agent.
¿Ya eres miembro de la Tarjeta Dorada o My WU? Entonces, no necesitas llenar el formulario.
Ve directamente con el Agente.

My world. My way.

MY WU

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) \$100.00
Destination State/Country / Destino: Estado/País

☐ Money in Minutes / Dinero en Minutos
☐ Next Day (where available) / Dólar Día Siguiente (según disponibilidad)

☐ To a Mobile Phone (where available) / A Teléfono Celular (donde este disponible)
Number with Country Code / Número con código de país

☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio? / With notification?

☐ To a Bank Account (where available) / A Cuenta Bancaria (donde este disponible)
Bank Name / Nombre de Banco
Routing / Swift / Bank Identifier Code / Número de Enrutamiento / Código de Identificación de Banco
Account Number / IBAN / Número de Cuenta
Other Information / Información Adicional

2 Sender Information / Información del Remitente

Your First Name / Su Nombre: Mello
Last Name / Apellido: Keszlerovic
Street (Apt #) / Dirección (if de Apt #): 37 N SHAMPOCK
City / Ciudad: Boise
State / Estado: ID
Zip / Código Postal: 83705
Phone / Teléfono: 208 570 5756
Email:

☐ Get a text when money is picked up / Reciba un mensaje de texto cuando el dinero enviado haya sido cobrado.
Your Mobile Phone / Su Teléfono Celular

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification. / Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario: KESZLEROVIC
Last Name(s) / Apellido (Paternal, Maternal): KESZLEROVIC

Effective June 1, 2013 / Efectivo a partir de Jun. 1.13:

- Tracking Number (MTCN) required to pick up money. / Número de Control del Envío (MTCN) es requerido para cobrar el envío de dinero.
- If sending less than \$300 to a Receiver in the U.S. that does not have identification, you may provide a test question and answer. / Si la cantidad enviada es menor a \$300 y el Destinatario en EE.UU. no posee un documento de identidad, usted podrá proporcionar una pregunta de prueba y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (un máximo de cuatro palabras):
Answer / Respuesta:

4 Your Signature / Su Firma

Signature / Firma: Mello

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. / Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, usted está de acuerdo con dichos términos y condiciones.

1234 All numbered notes are on Page 1. / Todas las notas numeradas están en la página 1.

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al firmar, usted nos autoriza notificarnos del estatus de su envío de dinero por mensaje texto, incluyendo cuando el Beneficiario retire el dinero. Aplica tarifas estándar de mensajería de texto.

AGENT USE ONLY / Sólo Para Uso del Agente

Money Transfer Control No. / No. de Control del Envío de Dinero (MTCN)	Amount / Cantidad	Transfer Fee / Cargo por el Envío	Other Fee / Otro Cargo	Tax / Impuestos	Total Collected / Cantidad Total	Exchange Rate / Tipo de Cambio	Amount to be Paid / Cantidad a Pagar
016117083699	\$100.00	\$15.00	\$0.00	\$0.00	\$115.00		

Customer Copy / Copia del Cliente: Page 3 / Página 3 DEMUNIFEB 1/13 Agent Signature / Firma del Agente: Mello Date / Fecha: 0001495 5/13

CUSTOMER RECEIPT

Money Transfer Sent: Envio de Dinero
CHECK INTO CASH #27005
10383 W FAIRVIEW AVE
BOISE ID 83704

Oper ID: MPJ

02/25/2013

732P EST

MICN: 251-912-0311

Sender/Patient: MILO KESTROVIC

Receiver/Destinatario: HARRIS KESTROVIC

Available In/Disponible en: Available
In/Disponible en: BOSNIA/HERZGOVINAUSD

Payout amount/Cantidad de pago:

80.00 US US DOLLAR

Exchange Rate/Tipo de cambio:

1.0000000

Amount/Cantidad: \$ 80.00

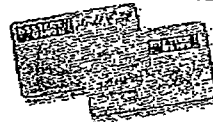
Charges/Cargos:

Payable Charge: ... 00.00

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN UNION



Already a Gold Card or My WU® Member? You don't need a form! Just speak with the Agent.
 ¿Ya eres miembro de la Tarjeta Dorada o My WU? Entonces, no necesitas llenar el formulario.
 Ve directamente con el Agente.

My world. My way.
MY WU

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) **\$ 80.00**

Destination: State/Country / Destino: Estado/País

☐ Money in Minutes / Dinero en Minutos

☐ Next Day (where available) / Dinero Día Siguiente (según disponibilidad)

☐ To a Mobile Phone (where available) *
 A Teléfono Celular (donde este disponible) *

☐ Number with Country Code / Número con código de país **305 N/A**

☐ Giro Palsano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio?
 With notification?

☐ To a Bank Account (where available) *
 A Cuenta Bancaria (donde este disponible) *

Bank Name / Nombre de Banco

Routing / Swift / Bank Identifier Code / Número de Enrutamiento / Código de Identificación de Banco

Account Number / IBAN / Número de Cuenta

Other Information / Información Adicional

2 Sender Information / Información del Remitente

Your First Name / Su Nombre **MELIO** Middle Initial / Inicial del segundo nombre

Last Name / Apellido **KESEROVIC**

Street (Apt #) / Dirección (f. de Apto) **1437 N. SHAMCOCK**

City / Ciudad **BOISE** State / Estado **ID** Zip / Código Postal **83713**

Phone / Teléfono **(208) 570 1536**

Email

Get a text when money's picked up / Recibir un mensaje de texto cuando el dinero enviado haya sido cobrado

Your Mobile Phone / Su Teléfono Celular

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification.
 Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario **JA YUS**

Last Name(s) / Apellido (Paterno, Materno) **KESEROVIC**

Effective June 1, 2013 / Efectivo a partir de Jun. 1.13:

• Tracking Number (MTCN) required to pick up money.
 Número de Control del Envío (MTCN) es requerido para cobrar el envío de dinero.

• If sending less than \$300 to a Receiver in the U.S. that does not have identification, you may provide a test question and answer.
 Si la cantidad enviada es menor a \$300 y el Destinatario en EE.UU. no posee un documento de identidad, usted podrá proporcionar una pregunta de prueba y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (un máximo de cuatro palabras)

Answer / Respuesta

4 Your Signature / Su Firma

[Signature]

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, usted está de acuerdo con dichos términos y condiciones.

1234 All numbered notes are on Page 1.
 1234 Todas las notas numeradas están en la página 1.

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al firmar, usted nos autoriza notificarnos del estatus de su envío de dinero por mensaje texto, incluyendo cuando el Beneficiario retire el dinero. Aplican tarifas estándar de mensajería de texto.

AGENT USE ONLY / Solo Para Uso del Agente							
Money Transfer Control No. No. de Control de Envío de Dinero (MTCN)	Amount Cantidad	Transfer Fee Cargo por el Envío	Other Fee Otros Cargos	Tax Impuestos	Total Collected Cantidad Recibida	Exchange Rate Tipo de Cambio	Amount to be Paid Cantidad a pagar
2519120311	\$ 80.00	\$ 15.00	\$	\$	95.00		

Western Union Money Transfer Service is available in the United States and Canada only. For more information, please call 1-800-927-7672 or visit our website at www.westernunion.com.



RECEIPT/RECIBO

Thank you/Gracias

TRACKING NUMBER (MTCN)/
NO. DE CONTROL DEL ENVIO:
286-227-5515

WU Card #/No. de Tarjeta Dineo

Earned/Puntos Ganados:

Total Points/Puntos Acumulados:

MONEYTREE #03
6493 W FAIRVIEW AVE, ID

Money Transfer/Envío de Dinero
CASH/Efectivo

Operator ID/No. de ID del Operador 531

Date of Transaction/Fecha:
June 10, 2013/Junio 10, 2013
Time of Transaction/Hora de la Transacción:
06:20 PM MDT
Sender/Remitente:
MEHO KESEROVIC
1437 N SHAMROCK, BOISE, ID. 83713, USA
2085705235

Receiver/Beneficiario:
HARIS KESEROVIC
Expected Payout Location/
Localidad donde Esperan Pago:
Bosnia and Herzegovina/Bosnia-Herzegovina

Service Type/Tipo del Servicio:
MONEY IN MINUTES/DINERO EN MINUTOS

Date Available in Receiver's Country/Fecha
Disponible en el País del Beneficiario:
June 11, 2013/Junio 11, 2013

Total of Remittance: 40.00 USD

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN UNION



Hava a Gold Card?
You don't need a form! Just speak with the Agent.
¿Tiene una Tarjeta Dorada? Entonces, no
necesita llenar el formulario. Sólo vaya donde el agente.

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) **\$ 40.00**
 Destination: State/Country / Destino: Estado/País

- ☐ Money In Minutes / Dinero en Minutos
☐ Next Day (where available) / Dinero Día Siguiente (según disponibilidad)
☐ To a Mobile Phone (where available) *
 A Teléfono Celular (donde está disponible) *
☐ Number with Country Code / Número con código de país **602 111**
☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio? / With notification?
☐ Home Delivery: Prepaid Card (USA only) / Tarjeta Prepagada - Entrega a Domicilio (solo EE.UU.)
☐ To a Bank Account (where available) / A Cuenta Bancaria (donde esté disponible)

2 Sender Information / Información del Remitente

Your First Name / Su Nombre **MELBO** Middle Initial / Inicial del segundo nombre
 Last Name / Apellido **KESEROVIC**
 Street (Apt #) / Dirección (Nº de Aptº) **437 N. SHANIKORE**
 City / Ciudad **WASH** State / Estado **DC** Zip / Código Postal **20012**
 Phone / Teléfono **202 1910 3236**
 Email

☐ Get a text when money's picked up / Pedir un mensaje de texto cuando el dinero enviado haya sido cobrado.
 Mobile Phone / Teléfono Celular

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al llenar, Usted nos autoriza notificarte del estatus de su envío de dinero por mensaje de texto, incluyendo cuando el Beneficiario retire el dinero. Aplican tarifas estándar de mensajería de texto.

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification. Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario **MAVIS**
 Last Name(s) / Apellido (Paterno, Materno) **KESEROVIC**

Only for Home Delivery or Giro Telefónico Con Aviso: Sólo para Entrega a domicilio o Giro Telefónico Con Aviso.

Business Name (if applicable) / Nombre comercial (si aplica)
 Address (Apt #/Suite #) / Dirección (Apto/oficina)
 City / Ciudad
 State / Estado Zip / Código Postal
 Phone and/or Email / Teléfono y/o Correo Electrónico

Only for sending to a Bank Account / Sólo Para Envíos a Cuenta de Banco

Bank Name / Nombre de Banco
 Routing / Swift / Bank Identifier Code / Número de Enrutamiento / Código de Identificación de Banco
 Account Number / IBAN / Número de Cuenta
 Other Information / Información Adicional

If sending less than \$1,000 to a Receiver in the U.S. that does not have identification, You may provide a test question and answer. Si la cantidad enviada es menor a \$1,000 y el Destinatario en EE.UU. no posee un documento de identidad, Usted podrá proporcionar una pregunta de prueba y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (un máximo de cuatro palabras)
 Answer / Respuesta

4 Your Signature / Su Firma

(Signature)

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, usted está de acuerdo con dichos términos y condiciones.

1234 All numbered notes are on the bottom of Page 1. / 1234 Todas las notas numeradas están en la parte inferior de la página 1.

AGENT USE ONLY / Sólo Para Uso del Agente									
Money Transfer Control No. / No. de Control de Envío de Dinero (MTCN)	Amount Sent / Cantidad Enviada	Transfer Fee / Cargo por el Envío	Other Fee / Otro Cargo	Total / Total	Total Collected / Cantidad Total Cobrada	Exchange Rate / Tipo de Cambio	Amount to Be Paid / Cantidad a Pagar		
	\$	\$	\$	\$					

Customer Copy / Copia del Cliente • Page 3 / Página 3 • DEWUN-FB (02/11) • Agent Signature / Firma del Agente



RECEIPT/RECIBO

Thank you/Gracias

TRACKING NUMBER (MTCN)/
NO. DE CONTROL DEL ENVIO:
940-127-6083

WU Card #/No. de Tarjeta Dorada:

Points Earned/Puntos Ganados:
Total Points/Puntos Acumulados:

MONEYTREE #03
6403 W FAIRVIEW AVE, ID

Money Transfer/Envio de Dinero
CASH/Efectivo

Operator ID/No. de ID del Operador: 311

Date of Transaction/Fecha:
June 15, 2013/Junio 15, 2013

Time of Transaction/Hora de la Transaccion:
05:30 PM MDT

Sender/Remitente
MEHO KESEROVIC
1437 N SHAMROCK, BOISE, ID, 83713, USA
2085705236

Receiver/Beneficiario:
HARIS KESEROVIC

Expected Payout Location/
Localidad donde Esperan Pago:
Bosnia and Herzegovina/Bosnia-Herzegovina

Service Type/Tipo del Servicio:
MONEY IN MINUTES/DINERO EN MINUTOS

Date Available in Receiver's Country/Fecha
Disponible en el Pais del Beneficiario:
June 16, 2013/Junio 16, 2013

Transfer Amount/

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN
UNION



Already a Gold Card or My WU® Member? You don't need a form! Just speak with the Agent.
¿Ya eres miembro de la Tarjeta Dorada o My WU? Entonces, no necesitas llenar el formulario.
Ve directamente con el Agente.

My world. My way.
MY WU

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) \$ 150.00
Destination: State/Country / Destino: Estado/País USA / MX

☐ Money in Minutes / Dinero en Minutos
☐ Next Day (where available) / Dinero Día Siguiente (según disponibilidad)
☒ To a Mobile Phone (where available) / A Teléfono Celular (donde esté disponible)
Number with Country Code / Número con código de país 950 / 411

☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio? With notification?

☐ To a Bank Account (where available) / A Cuenta Bancaria (donde esté disponible)
Bank Name / Nombre del Banco
Routing / Swift / Bank Identifier Code / Número de Enrutamiento / Código de identificación de Banco
Account Number / IBAN / Número de Cuenta
Other Information / Información Adicional

2 Sender Information / Información del Remitente

Your First Name / Su Nombre MELO Middle Initial / Inicial del segundo nombre
Last Name / Apellido KESEROVIC
Street (Apt #) / Dirección (H de Apt) 1437 N SHAW AVE
City / Ciudad BOISE State / Estado ID Zip / Código Postal 83703
Phone / Teléfono (208) 370-5236
Email

☐ Get a text when money's picked up / Recibir un mensaje de texto cuando el dinero enviado haya sido cobrado.
Your Mobile Phone / Su teléfono Celular

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification. Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario MAXIS
Last Name(s) / Apellido (Paterno/Materno) KESEROVIC

Be sure to provide the Tracking Number (MTCN) to your Receiver to pick up money! / Asegúrese de proveer el MTCN (Número de Control del Envío) al destinatario para que pueda cobrar el dinero.

Effective June 1, 2013, if sending less than \$300 to a Receiver in the U.S. that does not have I.D., you may provide a test question and answer. / Efectivo a partir del 1º de junio de 2013, si la cantidad enviada es menor a \$300 y el Destinatario en USA no cuenta con una identificación oficial, usted podrá proporcionar una pregunta de seguridad y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (a máxima de cuatro palabras)
Answer / Respuesta

4 Your Signature / Su Firma

Signature / Firma

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, usted está de acuerdo con dichos términos y condiciones.

1234 All numbered notes are on Page 1. / Todas las notas numeradas están en la página 1.

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al firmar, usted nos autoriza notificarnos del estatus de su envío de dinero por mensaje de texto, incluyendo cuando el Beneficiario retira el dinero. Aplica tarifas estándar de mensajería de texto.

AGENT USE ONLY / Solo Para Uso del Agente

Money Transfer Control No. / No. de Control del Envío de Dinero (MTCN)	Amount Sent / Cantidad Enviada	Transfer Fee / Comisión de Envío	Dollar Fee / Dólar Cargo	Tax / Impuesto	Total Collected / Cantidad Total	Exchange Rate / Tipo de Cambio	Amount to be Paid / Cantidad a Pagar
	\$	\$	\$	\$			

Customer Copy / Copia del Cliente • Page 3 / Página 3 • DEMONSTRATION / Agent Signature / Firma del Agente

000135

7741G

Appeals
Hiddan / McLaughlin
6/27/13
Sh

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

ORIGINAL

NO. 1150 FILED
AM 11:50 PM
JUN 26 2013
CHRISTOPHER D. RICH, Clerk
By KATHY BIEHL
Deputy

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	AFFIDAVIT IN SUPPORT OF MOTION TO
	)	WITHDRAW AS APPELLANT'S ATTORNEY
	)	MOTION TO APPOINT PUBLIC DEFENDER
STATE OF IDAHO,)	
)	
Respondent,)	
_____)	

Comes now Adis Keserovic, brother of Petitioner Haris Keserovic and submits this Affidavit in support of the Motion to Withdraw Appellant's Attorney, Appoint the Ada County Public Defender and for Extension of Time to File Appellant's Brief.

I, Adis Keserovic , hereby swear and affirm the following to be true and correct to the best of my knowledge and belief:

1. I am the brother of Haris Keserovic, the Petitioner-Appellant in the above entitled action;
2. In January of 2013, Haris was deported back to our native country of Bosnia. While living with us in the United States, my brother had very few personal belongings. Upon his return, he took very few belongings. He took a few pieces

of baggage which only held his personal items and clothing. I know this because he was being held in Utah on the immigration matter. My father and I helped packed his personal belongings, shoes and a small amount of money and sent them to him in Utah. He never had an opportunity to get those items after he became incarcerated and before he was deported.

3. I am able to communicate with Haris about 3-4 times per week using Facebook and Skype and I have knowledge of his financial situation based on conversations and observations during our Skype talks.
4. Haris is not working and is unable to find a job. He does not have a personal computer or a phone. When Haris first arrived in Bosnia, he lived with my aunt. He only recently moved to an apartment. In order to arrange Skype conversations, he will go to my aunt's house and use her computer to talk. We arrange meeting in several different ways. Approximately one time per week, he will borrow friends phone to tell me when he will be available by Skype. The cost is expensive because it is an international connection. Other times, once or twice a week, he will send me a Facebook message that he is available or when he will be available. Most frequently, he or my aunt will tell me when he will be available at my aunt's house to Skype. It takes some coordination to talk with him as we both have to be available on line and be aware of when Haris will be at my aunt's house to Skype. Additionally, there is an 8 hour time difference between Boise and Bosnia.
5. I have knowledge of the economic situation in Bosnia. Our family, though separated by long distances, keeps close contact with one another. I frequently talk with my family members about how they are doing. The economy in Bosnia is very poor. It is common practice for our family members to look outside Bosnia in neighboring countries and send money back to family members to live on. Work is frequently seasonal.
6. All of my extended family receives money to live on in this way. My family who lives in Idaho regularly sends money back to relatives in Bosnia so that they have

money to survive on. My family in Iowa also sends money to our relatives in Bosnia so that they have money to survive on.

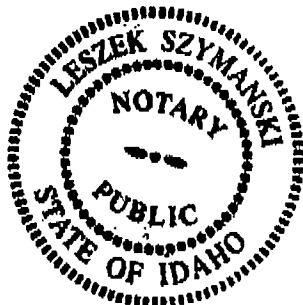
7. Haris' only financial support at this time is the money my father sends him. My father, Meho Keserovic, only makes approximately \$2,100 per month. He sends Haris approximately \$250 per month. I know this because my father does not speak English well and I help ensure money gets sent to Haris. With this money, Haris has been able to find an apartment where he is roommates with another person and pay for his food. Attached as Exhibit A, are true and correct copies of receipts for money my father has sent Haris to live on.
8. I offer this information in support of the Motion to Withdraw Appellant's Attorney, Appoint the Ada County Public Defender and for Extension of Time to File Appellant's Brief.

Dated this 26 day of June, 2013.

By: [Signature]
Adis Keserovic

State of Idaho)
) ss
County of ADA)

Subscribed and sworn before me this 26 day of June, 2013.



By: [Signature]
(Official Signature and Seal)
Notary Public:
Residing at: Bove, ID
My commission expires: 2/28/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of June, 2013, I caused a true and accurate copy of the foregoing document to be served on the persons identified below by the method indicated:

Ralph Blount

Ada County Prosecuting Attorney's Office

200 W. Front St.

Boise, ID 83702

☐ By United States mail

☒ By telefacsimile

☐ By personal delivery

☐ By overnight mail/FedEx

☐ By Courthouse Box

Alan Trimming

Ada County Public Defender

200 W Front St.

Boise, Idaho 83702

☐ By United States mail

☒ By telefacsimile

☐ By personal delivery

☐ By overnight mail/FedEx

☐ By Courthouse Box

Kenneth K. Jorgensen

Deputy Attorney General

Criminal Law Division

P.O. Box 83720

Boise, ID 83720-0010

☐ By United States mail

☒ By telefacsimile

☐ By personal delivery

☐ By overnight mail/FedEx

☐ By Courthouse Box

DATED THIS 24 day of June, 2013.


A. Denise Penton

CUSTOMER RECEIPT

Transfer Confirmation/
confirmación de envío

Money Transfer Send/
Transferencia de Dinero

QPR ID: 890 05 14 2011 09:50 AM EST

MTCN : 061-708-3699

Agent Address: FRED MEYER 406439
10751 W OVERLAND
RD, 10, 817091375, USA

Sender/Remittente:
MEHO KESEROVIC

Receiver/Beneficiario:
MARIS KESEROVIC

Expected Payout Location/
Lugar donde se espera pagar
Bosnia and Herzegovina

Amount /Cantidad:	100.00
Fee /Fee /Tarifa	15.00
Delivery/Entrega:	0.00
Fee /Fee/Mensaje:	
Tax /Impuesto:	0.00
TOTAL /TOTAL:	115.00

Amount to be paid/ Cantidad a Pagar:
100.00 US Dollar
Exchange Rate : 1.0000

Delivery Service /Servicio de Envío:
MONEY IN MINUTES

We value your opinion! Go to
westernunion.com/listens to tell us
about our service. Survey code:
0617083699

IN ADDITION TO THE TRANSFER FEE,
WESTERN UNION ALSO TAKES MONEY
WHEN IT CHANGES YOUR DOLLARS INTO
FOREIGN CURRENCY. PLEASE SEE
REVERSE SIDE FOR MORE INFORMATION
REGARDING CURRENCY EXCHANGE. IF
YOU HAVE ANY QUESTIONS, PLEASE CALL 1-800-950-5239

000160

EXHIBIT A

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN
UNION



Already a Gold Card or My WU[®] Member? You don't need a form! Just speak with the Agent.

¿Ya eres miembro de la Tarjeta Dorada o My WU? Entonces, no necesitas llenar el formulario. Ve directamente con el Agente.

My world. My way.

MY WU

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) \$100.00
Cantidad a Enviar (Dólares)
Destination: State/Country
Destino: Estado/País

☐ Money in Minutes / Dinero en Minutos

☐ Next Day (where available) / Dinero Día Siguiente (según disponibilidad)

☒ To a Mobile Phone (where available) *
A Teléfono Celular (donde este disponible) *

Number with Country Code 708 570 5236
Número con código de país

☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio?

☐ To a Bank Account (where available) *
A Cuenta Bancaria (donde esta disponible) *

Bank Name
Nombre de Banco
Routing / Swift / Bank Identifier Code
Número de Enrutamiento / Código de Identificación de Banco
Account Number / IBAN
Número de Cuenta
Other Information
Información Adicional

2 Sender Information / Información del Remitente

Your First Name MELIO Middle Initial
Su Nombre: MELIO Inicial del segundo nombre
Last Name KESELOVIC
Apellido
Street (Apt.)
Dirección (U. de Apt.) 37 N. SHAMLOCK
City CHICAGO State IL Zip 60642
Ciudad Estado Código Postal
Phone 708 570 5236
Teléfono
Email

☒ Get a text when money's picked up.
Reciba un mensaje de texto cuando el dinero enviado haya sido cobrado.

Your Mobile Phone / Su Teléfono Celular

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification.

Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name MELIO
Nombre del Beneficiario
Last Name(s) KESELOVIC
Apellido (Ejemplo: Materno)

Effective June 1, 2013 / Efectivo a partir de Jun. 1.13:

• Tracking Number (MTCN) required to pick up money.
Número de Control del Envío (MTCN) es requerido para cobrar el envío de dinero.

• If sending less than \$300 to a Receiver in the U.S. that does not have identification, you may provide a test question and answer.
Si la cantidad enviada es menor a \$300 y el Destinatario en EE.UU. no posee un documento de identidad, usted podrá proporcionar una pregunta de prueba y su respuesta.

Test Question (limit 4 words)
Pregunta de Prueba (un máximo de cuatro palabras)

Answer
Respuesta

4 Your Signature / Su Firma

MELIO

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, usted está de acuerdo con dichos términos y condiciones.

1234 All numbered notes are on Page 1.

1234 Todas las notas numeradas están en la página 1.

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al firmar, usted nos autoriza notificarnos del estatus de su envío de dinero por mensaje de texto, incluyendo cuando el Beneficiario retire el dinero. Aplican tarifas estándar de mensajería de texto.

AGENT USE ONLY / Sólo Para Uso del Agente

Money Transfer Control No. Número de Control de Envío de Dinero (MTCN)	Amount Cantidad	Transfer Fee Cargo por el Envío	Other Fee Otro Cargo	Total Collected Cantidad Total	Exchange Rate Tipo de Cambio	Amount to be Paid Cantidad a Pagar
061170831697	\$100.00	\$1.50	\$0.00	\$101.50		\$101.50

Customer Copy / Copia del Cliente • Page 3 / Página 3 • DEMUNIFCB (1/13) • Agent Signature / Firma del Agente

000161 S.S.I.

CUSTOMER RECEIPT

Money Transfer Send Envio de Dinero
CHECK INTO CASH #27005
10383 W FAIRVIEW AVE
BOISE ID 83704

Oper ID: MP1

02/25/2013

732P EST

MTCN: 251-912-0311

Sender/Remittente: MIRO KESEROVIC

Receiver/Destinatario: HARTS KESEROVIC

Available In/Disponible en: Available
In/Disponible en: BOSNIANERZEGOVINAUSD

Payout amount/Cantidad de pago:

80.00 US US DOLLAR

Exchange Rate/Tipo de cambio:

1.0000000

Amount Paid/Total: \$ 80.00

Charges/Cargos:

Service Charge: 15.00

WESTERN UNION

My world. My way.

MY WIFE

3 Receiver Information / Information du Bénéficiaire

11

...the ...

o en minutos

e) Dinero Da Siga

este disponible) ⁴

o Telegráfico

not available)

Esté disponible

Identifier Code

تذکرہ

...the ...

4 Your Signature / Su Firma

Middle Initial _____
 Inicial del segundo nombre.

[illegible]

HAMMOCK

[illegible]



enviado haya sido cobrado.

1990

AGENT USE ONLY

DATE	15	07	
------	----	----	--

Page 3 of 3 UNIFIED3.11/13 Page

Culture / Formedel Agente 19 V 23

Customer Copy / Copia del Cliente • Page 3 / Página 3 DRF/JNFD3.1/13 Agent Signature / Firma del Agente [Signature] 006163

WESTERN UNION
RECEIPT/RECIBO



RECEIPT/RECIBO
Thank you/Gracias

TRACKING NUMBER (MTCN)/
NO. DE CONTROL DEL ENVIO:
286-227-115

VA Card #/No. de Tarjeta Dorada:

Card #/No. de Tarjeta Dorada:

Card #/No. de Tarjeta Dorada:

MONEYTREE #03
6493 W FAIRVIEW AVE, ID

Money Transfer/Envio de Dinero
CASH/Efectivo

Operator ID/No. de ID del Operador: 631

Date of Transaction/Fecha:
June 10, 2013/Junio 10, 2013

Time of Transaction/Hora de la Transacción:
05:25 PM MDT

Sender/Remitente:
MIHO KESEROVIC
1437 N SHAMROCK, BOISE, ID, 83713, USA
2085705238

Receiver/Beneficiario:
HARIS KESEROVIC

Expected Payout Location/
Localidad donde Esperar Pago:
Bosnia and Herzegovina/Bosnia-Herzegovina

Service Type/Tipo del Servicio:
MONEY IN MINUTES/DINERO EN MINUTOS

Date Available in Receiver's Country/Fecha
Disponible en el País del Beneficiario:
June 11, 2013/Junio 11, 2013

Total to Beneficiary: 40.00 USD

000164

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN UNION



Have a Gold Card?
You don't need a form! Just speak with the Agent.
¿Tiene una Tarjeta Dorada? Entonces, no
necesita llenar el formulario. Sólo vaya donde el agente.

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) **\$ 10.00**

Destination: State / Country / Destino: Estado / País **USA**

☐ Money in Minutes / Dinero en Minutos

☐ Next Day (where available) / Dinero Día Siguiente (según disponibilidad)

☐ To a Mobile Phone (where available) * / A Teléfono Celular (donde este disponible) *

Number with Country Code / Número con código de país **800 234 5678**

☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio? / With notification?

☐ Home Delivery: Prepaid Card (USA only) / Tarjeta Prepagada - Entrega a Domicilio (solo EE.UU.)

☐ To a Bank Account (where available) * / A Cuenta Bancaria (donde este disponible) *

2 Sender Information / Información del Remitente

Your First Name / Su Nombre **MIKE** Middle Initial / Inicial del segundo nombre

Last Name / Apellido **RESERVOIR**

Street (Apt #) / Dirección (Apto #) **1000 N. 10th St**

City / Ciudad **ALBUQUERQUE** State / Estado **NM** Zip / Código Postal **87102**

Phone / Teléfono **505 234 5678**

Email

☐ Get a text when money's picked up / Reciba un mensaje de texto cuando el dinero enviado haya sido cobrado

Mobile Phone / Teléfono Celular

*By completing, you authorize us to send you text message notification(s) about your money transfer status, including notifying you when the receiver picks up funds. Standard message and data rates may apply. / *Al firmar, Usted nos autoriza notificarle del estatus de su envío de dinero por mensaje de texto, incluyendo cuando el Beneficiario retire el dinero. Aplican tarifas estándar de mensajería de texto.

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification. Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario **YANIS**

Last Name(s) / Apellido (Apellido Materno) **RESERVOIR**

Only for Home Delivery or Giro Telefónico Con Aviso / Solo para Entrega a domicilio o Giro Telefónico Con Aviso

Business Name (if applicable) / Nombre Comercial (si aplica)

Address (Apt #/Suite #) / Dirección (Apto/Oficina)

City / Ciudad

State / Estado Zip / Código Postal

Phone and/or Email / Teléfono y/o Correo Electrónico

Only for sending to a Bank Account / Solo Para Envíos a Cuenta de Banco

Bank Name / Nombre de Banco

Routing / Swift / Bank Identifier Code / Número de Enrutamiento / Código de Identificación de Banco

Account Number / IBAN / Número de Cuenta

Other Information / Información Adicional

If sending less than \$1,000 to a Receiver in the U.S. that does not have identification, You may provide a test question and answer. Si la cantidad enviada es menor a \$1,000 y el Destinatario en EE.UU. no posee un documento de identidad, Usted podrá proporcionar una pregunta de prueba y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (un máximo de cuatro palabras)

Answer / Respuesta

4 Your Signature / Su Firma

MIKE RESERVOIR

Certain terms and conditions governing this transaction and the services you have selected are set forth on the attached pages. By signing this receipt, you are agreeing to those terms and conditions. Algunos de los términos y condiciones que rigen la transacción y los servicios escogidos se establecen en los documentos anexos. Firmando este recibo, Usted está de acuerdo con dichos términos y condiciones.

AGENT USE ONLY / Solo Para Uso del Agente									
Money Transfer Control No. / No. de Control de Envío de Dinero (MTCN)	Amount / Cantidad	Transfer Fee / Cargo por Envío	Other Fee / Otros Cargo	Tax / Impuestos	Total Collected / Cargos Totales	Exchange Rate / Tipo de Cambio	Amount to be Paid / Cantidad a Pagar		
	\$	\$	\$	\$	\$				



RECEIPT/RECIBO

Thank you/Gracias

TRACKING NUMBER (MTCN)/
NO. DE CONTROL DEL ENVIO:
940-127-6083

WU Card #/No. de Tarjeta Dorada:

Points Earned/Puntos Ganados:
Total Points/Puntos Acumulados:

MONEYTREE #03
6493 W FAIRVIEW AVE, ID

Money Transfer/Envio de Dinero
CASH/Efectivo

Operator ID/No. de ID del Operador: 311

Date of Transaction/Fecha:
June 15, 2013/Junio 15, 2013

Time of Transaction/Hora de la Transacción:
05:39 PM MDT

Sender/Remilente:
MEHO KESEROVIC
1437 N SHAMROCK, BOISE, ID, 83713, USA
2085705236

Receiver/Beneficiario:
HARIS KESEROVIC

Expected Payout Location/
Localidad donde Esperan Pago:
Bosnia and Herzegovina/Bosnia-Herzegovina

Service Type/Tipo del Servicio:
MONEY IN MINUTES/DINERO EN MINUTOS

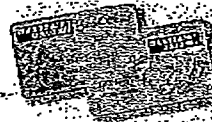
Date Available in Receiver's Country/Fecha
Disponible en el Pais del Beneficiario:
June 16, 2013/Junio 16, 2013

Transfer Amount/

MONEY TRANSFER

Send Transferencia de Dinero - Enviar

WESTERN
UNION



Already a Gold Card or My WU® Member? You don't need a form! Just speak with the Agent.

Ya eres miembro de la Tarjeta Dorada o My WU? Entonces, no necesitas llenar el formulario. Ve directamente con el Agente.

My world. My way.

MY WU

1 Transaction Information / Información de la Transacción

Send Amount (Dollars) / Cantidad a Enviar (Dólares) \$ 150.00
 Destination State/Country / Destino: Estado/País VIENNA

☐ Money in Minutes / Dinero en Minutos
☐ Next Day (where available) / Dinero Día Siguinte (Según disponibilidad)

☐ To a Mobile Phone (where available) / A Teléfono Celular (donde este disponible)
 A: Teléfono Celular (donde este disponible)

☐ Number With Country Code / Número con código de país 302111

☐ Giro Paisano ☐ Giro Telefónico ☐ ¿Con aviso a domicilio? / With notification?

☐ To a Bank Account (where available) / A Cuenta Bancaria (donde este disponible)

Bank Name / Nombre de Banco
 Routing / SWIFT Bank Identifier Code / Número de Enrutamiento / Código de identificación de Banco
 Account Number / IBAN / Número de Cuenta
 Other Information / Información Adicional

2 Sender Information / Información del Remitente

Your First Name / Su Nombre MILO Middle Initial / Inicial de segundo nombre XX
 Last Name / Apellido KESKOVIC
 Street (Appt) / Dirección (If de Apt) 1437 S SHAMROCK
 City / Ciudad SALE State / Estado IL Zip / Código Postal 60140
 Phone / Teléfono (708) 570-5256
 Email

☐ Get a text when money's picked up / Recibir un mensaje de texto cuando el dinero enviado haya sido cobrado

Your Mobile Phone / Su Teléfono Celular

3 Receiver Information / Información del Beneficiario

Write the name of the receiver exactly as it appears on their identification. Escriba el nombre del beneficiario exactamente como aparece en su identificación.

Receiver's First Name / Nombre del Beneficiario MAX
 Last Name(s) / Apellido (Paterno; Materno) KESKOVIC

Be sure to provide the Tracking Number (MTCN) to your Receiver to pick up money / Asegúrese de proveer el MTCN (Número de Control del Envío) al destinatario para que p cobrar el dinero.

Effective June 1, 2013, if sending less than \$300 to a Receiver in the U.S. that does not have I.D., you may provide a test question and answer / Efectivo a partir del 1º de junio de 2013, si la cantidad enviada es menor a \$300 y el Destinatario en USA no cuenta con una identificación oficial, usted podrá proporcionar una pregunta de seguridad y su respuesta.

Test Question (limit 4 words) / Pregunta de Prueba (un máximo de cuatro palabras)
 Answer / Respuesta

4 Your Signature / Su Firma

KESKOVIC

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1234 All numbered notes are on Page 1. / Todas las notas numeradas están en la página 1.

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7741G

AGENT USE ONLY / Solo Para Uso del Agente									
Money Transfer Control No. / No. de Control de Envío de Dinero (MTCN)	Amount / Cantidad	Transfer Fee / Cargo por el Envío	Other Fee / Otros Cargos	Tax / Impuesto	Total Collected / Cargos Totales	Exchange Rate / Tipo de Cambio	Amount to be Paid / Cantidad a pagar		
	\$	\$	\$	\$					
Customer Copy / Copia del Cliente • Page 3 / Página 3								Agent Signature / Firma del Agente	
								000167 / Data / Fecha	

Time	Speaker	Note
03:12:07 PM	.	
04:00:07 PM	.	Keserovic v. State CVPC12-17517 Motion to Withdraw/Appt PD and Extend Briefing Schedule
04:00:31 PM	Counsel	Dunn/ Pentan
04:00:44 PM	Ct	Calls case and reviews w/ int. by Ms. Pentan
04:02:56 PM	Pentan	Argues Motion to Withdraw w/ int by court
04:06:41 PM	Dunn	Argues against, notes affidavit not signed
04:08:35 PM	Pentan	Argues further
04:13:14 PM	Dunn	Argues further
04:14:31 PM	Pentan	Argues further
04:16:16 PM	Ct	Q. on specifics
04:18:13 PM	Ct	Reviews statute.
04:19:29 PM	Ct	Allows till 8/12/13 to submit signed financial affidavit.
04:20:22 PM	Pentan	Q. on specifics of requirements.
04:20:47 PM	Dunn	New statute as of July 1 re: affirmations
04:21:34 PM	Ct	8/14/13 at 4:00 will have status conf. Oral Argument on 8/2 is vacated.
04:23:29 PM		End

Strickland
McLaughlin
CS 7/11

JUL 26 2013

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF IDAHO
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk
By AMY LYCAN
DEPUTY

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent,

Case No. CV-PC-2012-17517

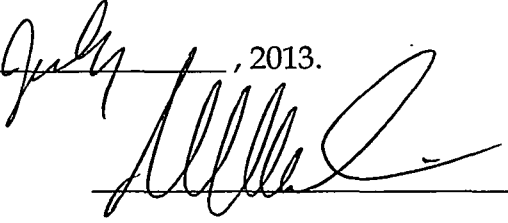
ORDER TO CONTINUE

THIS MATTER having come before the Court pursuant to Petitioner-Appellant's Motion for Withdrawal of Petitioner-Appellant's Attorney and Appointment of the State Appellate Public Defender, the Court having reviewed the pleadings on file and the motion; the Court being fully apprised in the matter and good cause appearing;

IT IS HEREBY ORDERED as follows:

1. The hearing scheduled for August 7, 2013 is vacated.
2. The briefing schedule set forth in the Order Governing Procedure on Appeal is vacated until such time as a decision has been made on the Petitioner-Appellant's Motion.
3. Petitioner-Appellant has until August 12, 2013 to provide to the court a signed financial affidavit from Haris Keserovic.
4. The motion hearing is continued until August 14, 2013 at 4:00 p.m. for a status conference.

DATED THIS 26 day of July, 2013.


MICHAEL MCLAUGHLIN
Senior District Judge

AL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of JULY, 2013, I caused a true and correct copy of the foregoing document to be served to the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

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☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

Alan Trimming
Ada County Public Defender
200 W Front St.
Boise, Idaho 83702

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
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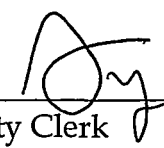
Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

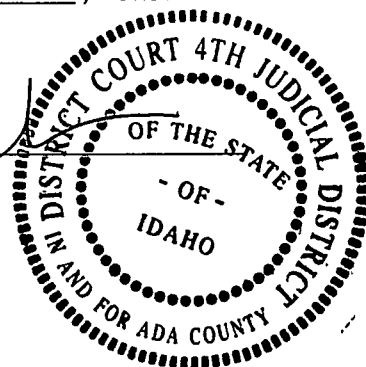
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Maria E. Andrade
Andrade Legal
P.O. Box 2109
Boise, ID 83701

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
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DATED THIS 29 day of JULY, 2013.


Deputy Clerk



JUL 30 2013

CHRISTOPHER D. RICH
By AMY LYCAN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

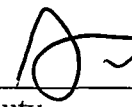
Respondent.

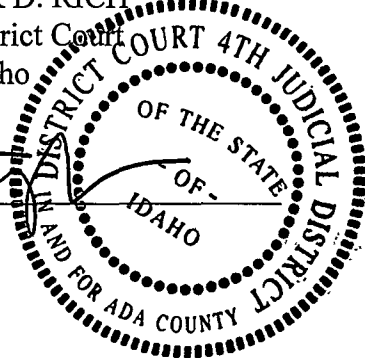
Case No. CV-PC-2012-17517

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE That the Honorable Michael McLaughlin, District Judge, has reset this matter for Motion Hearing on August 21st, 2013 at 2:30 p.m., at the Ada County Courthouse, 200 W. Front, Boise, Idaho. The Motion Hearing scheduled on August 14th, 2013 has been vacated.

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: 
Deputy



CERTIFICATE OF MAILING

I hereby certify that on this 31 day of JULY 2013, I mailed (served) a true and correct copy of the within instrument to:

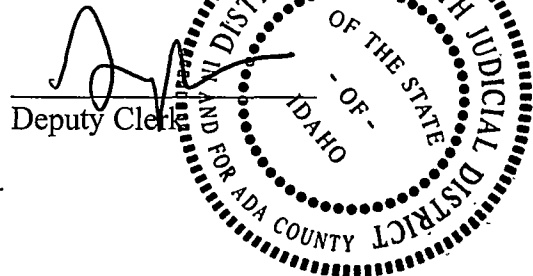
MARIA E. ANDRADE
ATTORNEY AT LAW
P.O. BOX 2109
BOISE, ID 83701

RALPH BLOUNT
ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

ALAN TRIMMING
ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL LAW DIVISION
P.O. BOX 83720
BOISE, ID 83720

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho



2013
8/6
18

Maria E. Andrade
ISB #6445
A. Denise Penton
ISB # 5526
Andrade Legal
P.O. Box 2109
Boise, ID 83701
Tel: (208) 342-5100
Fax: (208) 342-5101

ORIGINAL

NO. _____
A.M. _____ FILED _____ P.M. 18

AUG 06 2013

CHRISTOPHER D. RICH, Clerk
By CHELSIE PINKSTON
DEPUTY

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2012-17517
)	
vs.	)	FINANCIAL AFFIDAVIT
	)	OF HARIS KESEROVIC
)	
STATE OF IDAHO,)	
)	
Respondent,)	
_____)	

Comes now Haris Keserovic, Petitioner-Appellant in the above entitled action, and hereby submits this Financial Affidavit in support of the Motion to Appoint a Public Defender for the appeal of my Post-Conviction Relief action. I am unable to pay any costs associated with the appeal and am unable to afford an attorney. I swear, affirm and certify under penalty of perjury pursuant to the laws of the State of Idaho that the information set forth below is true and correct to the best of my knowledge and belief. I understand that I may be required to reimburse the public defender at the end of my case.

IDENTIFICATION AND RESIDENCE:

Name: Harris KESEROVIC Other name(s) I have used: _____

Address: Polje 97, 77230 Velika Kladusa

How long at that address? February, 2013 Phone: _____

Date and place of birth: Bosnia, August 30, 1985

Education completed (years): _____

FAMILY:

Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed ☐ Separated

The following minor children live with me:

Name	Age	Relationship	Child Support Received (\$/month)
N/A			

I have the following children I am supporting:

Name	Age	Relationship	Child Support Obligation (\$/month)	Current

EMPLOYMENT:

Occupation: N/A Employed by: _____

Position: _____ Salary: \$ _____ or \$ _____ per hour

Monthly gross income \$ _____. If your current position is temporary what are the start and end dates? _____

Phone number to use to verify: _____ If you have held this job less than one year, previous employer: _____

Phone number to use to verify: _____

Spouse's Occupation: N/A Employed by: _____

Position: _____ Salary: \$ _____ or \$ _____ per hour

Monthly gross income \$ _____. If your spouse's current position is temporary what are the start and end dates? _____

I receive assistance or support from the following sources and in the following monthly amounts:

Spouse: \$ N/A Welfare: \$ _____ Food Stamps: \$ _____ Relatives: \$ 250/Month

Unemployment Compensation: \$ N/A Social Security: \$ _____ Retirement: \$ _____

Former Spouse: \$ _____ Other (identify) _____ \$ _____

If unemployed, how long since your last regular employment? _____

List all places where you have applied for work in the last six months:

Company	Last Applied	Reason for Rejection
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Are you willing to work now? YES What work can you do? _____

What is the minimum wage for which you are willing to work? \$ ANYTHING

List all employers you worked for during the last three years.

Company	Date Terminated	Ending Salary	Reason for Termination
DISHWASHER	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Are you capable of working now? ☐ Yes ☐ No If no, why not? _____

If a health problem keeps you from working, provide the name of your treating doctor: _____

_____. Is your health problem permanent? ☐ Yes ☐ No

When will you be released to work? _____

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Address	City	State	Legal Description	Value	Your Equity
N/A					

List all other property owned by you and state its value.

Description (provide description for each item)

Value

Cash	NO
Notes and Receivable	NO
Vehicles	NO
Bank/Credit Union/Savings/Checking Accounts	NO
Stocks/Bonds/Investments/Certificates of Deposit	NO
Trust Funds	NO
Retirement Accounts/IRAs/401(k)s	NO
Cash Value Insurance	NO
Motorcycles/Boats/RVs/Snowmobiles	NO
Furniture/Appliances	NO
Jewelry/Antiques/Collectibles	NO
TVs/Stereos/Computers/Electronics	NO
Tools/Equipment	NO
Sporting Goods/Guns	NO
Horses/Livestock/Tack	NO
Other (describe)	N/A

EXPENSES: List all of your monthly expenses

Expense	Average Monthly Payment
Rent/House Payment	\$ 100
Vehicle Payment(s)	0
Credit Cards (list last 4 digits of each account number)	
	\$2 -3000
Loans (name of lender and reason for loan)	
Electricity/Natural Gas	\$25
Water/Sewer/Trash	\$25
Phone	
Cellular Phone	
Cable/Satellite TV/Internet	
Groceries	\$100
Dining Out	
Clothing	
Auto Fuel/Transportation	
Auto Maintenance	
Cosmetics/Haircuts/Salons	
Entertainment/Books/Magazines	
Home Insurance	
Auto Insurance	
Life Insurance	

Expense (continued)	Average Monthly Payment
Medical Insurance _____	N/A
Medical Expense _____	
Child Care _____	
Other (describe) _____	

MISCELLANEOUS:

How much can you borrow? \$ 0. My parents provide financial support.

_____ From whom? _____ When did you file your last
income tax return? _____ Amount of refund: \$ _____

PERSONAL REFERENCES: (These persons must be able to verify information provided.)

Name	Address	Phone	Years Known
Adis KESEROVIC	- Brother	Boise, ID	

Haris Keserovic
Haris Keserovic

Haris Keserovic 7/23/13
Signature Date

By signing below, the signer certifies and affirms that the person who signed the document is
Haris Keserovic as proven by satisfactory evidence to the signer.

Location of Certifier _____)
S.S. _____
County/State or Country of _____)

On this ____ day of _____ in the year of 2013, before me _____ (Signer), a
notary public, personally appeared Haris Keserovic and satisfactorily proved to me to be the
signer of the above instrument by the oath of _____ (Signer), a competent and credible
witness for that purpose, by me duly sworn, and that he (she) executed the same.

Notary Public:
My Commission Expires on:
Residing at:

Financial Affidavit of Haris Keserovic

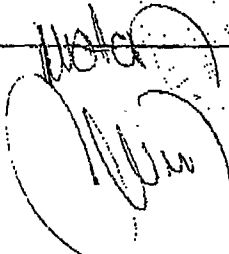
Ja, NOTAR Nerbisa Mržljak. Velika Kladuša, Ulica Hamdije Pozderca br.2

OVJERA POTPISA

Potvrđujem da je **HARIS KESEROVIĆ**, Velika Kladuša u mojoj prisutnosti svojeručno potpisao ovaj dokument pisan na engleskom jeziku sačinjen dana 23.07.2013 godine. Identitet stranke utvrdila sam na osnovu LK BIH 30LCL1226, izdane od strane MUP USK Velika Kladuša.
Potpis je istinit. Notar ne odgovara za sadržaj isprave na kojoj ovjerava potpis.
Nagrada za rad notara zaračunata po članu 10 TNNN u iznosu od 4,10 KM. Zaračunat porez na dodanu vrijednost (PDV).

Broj OPU -OV: 1406 / 2013
Velika Kladuša, 23.07.2013

NOTAR
Nerbisa Mržljak



I, NOTARY Nerbisa Mržljak, Velika Kladuša, Hamdije Pozderca Street no. 2

CERTIFICATION OF SIGNATURE

Certify that HARIS KESEROVIĆ, Velika Kladuša in my presence personally signed this document written in English language, made on 23 July 2013. I determined identity of the client on basis of Bosnia and Herzegovina ID Card number 30LCL1226, issued by Ministry of Interior of Una-Sana Canton Velika Kladuša.

The signature is authentic. Notary is not responsible for contents of the document at which she certifies signature.

Reward for work of notary calculated by article 10 of Tariff on Rewards and Fees of Notary in amount of 4,10KM. Value added tax (VAT) included.

Number of Certification Register File: 1406/2013.

Velika Kladuša, 23 July 2013.

NOTARY
Nerbisa Mržljak
(Unreadable signature)

Stamp:
Bosnia and Herzegovina
Federation of Bosnia and Herzegovina
Notary
Nerbisa Mržljak



"I certify that this translation fully corresponds to the original document which is written in Bosnian Language.
Logbook number: 11-III, 02 August 2013, Velika Kladuša
Zijad Durić, Certified Court Interpreter for English Language"

Durić Zijad

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of August, 2013, I caused a true and correct copy of the foregoing document to be served to the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
200 W. Front St.
Boise, ID 83702

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Alan Trimming
Ada County Public Defender
200 W Front St.
Boise, Idaho 83702

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Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

☒ By United States mail
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Maria E. Andrade
Andrade Legal
P.O. Box 2109
Boise, ID 83701

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 8 day of August, 2013.



A. Denise Penton
Managing Attorney

FILED
Wednesday, August 21, 2013 at 02:34 PM
 CHRISTOPHER D. RICH, CLERK OF THE COURT
 BY: Am
 Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

HARIS KESEROVIC, PLAINTIFF
 Plaintiff,

vs

STATE OF IDAHO, DEFENDANT
 Defendant.

CASE NO. CV-PC-2012-17517

ORDER APPOINTING PUBLIC DEFENDER

This matter having come before this court as to the Application for Public Defender of HARIS KESEROVIC, and good cause appearing therefor;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That an attorney be appointed through the; Public Defender's Office
 200 W. Front Street Rm. 1107
 Boise ID 83702, **(208) 287-7400**

for the County of Ada, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent the above named applicant in all appellant proceedings pursuant to I.R.C.P. 75(L)(1), of the in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

IT IS FURTHER ORDERED THAT A HEARING BE SET FOR:

Hearing Type: Oral Argument Hearing Date: Thursday January 9th, 2013 at 4:00pm

Location: Ada County Courthouse, 200 W. Front Street, Boise ID 83702

Date: 8/21/13

Michael McLaughlin
 Michael McLaughlin

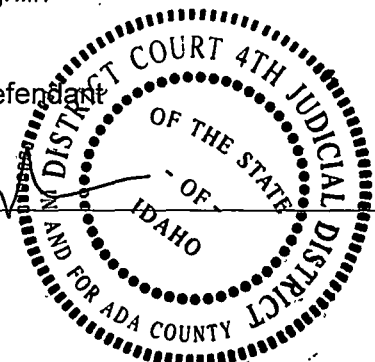
Clerk will provide copies to:

☒ Public Defender

☒ Plaintiff

☒ Defendant

Deputy Clerk
 Deputy Clerk



<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>2:27:03 PM</u>		CV-PC-2012-17517 Keserovic vs. State Motion Hearing
<u>2:27:41 PM</u>		Shawna Dunn for the state; Denise Penton for Mr. Keserovic
<u>2:27:43 PM</u>	Judge	This is regarding the financial affidavit of the post conviction case. Have a request for the plaintiff's counsel to withdraw and to appoint a public defender to represent Mr. Keserovic. Mr. Keserovic is in his native country of Bosnia so counsel requested additional time to obtain a financial affidavit.
<u>2:29:44 PM</u>	Ms. Dunn	I have reviewed the affidavit
<u>2:29:52 PM</u>	Judge	There was a certification of signature submitted in Bosnia.
<u>2:30:32 PM</u>	Ms. Dunn	I concur
<u>2:30:37 PM</u>	Judge	The court will allow petitioners counsel to withdraw. I will appoint the public defenders office. Clerk to prepare order appointing the public defenders office. Petitioner to submit an order allowing withdrawal. Lists dates.
<u>2:32:42 PM</u>		I will prepare the order governing procedure. If the public defenders office has a problem with that I would propose to combine. Add "If the public defenders office has an objection to the scheduling order they can request a hearing"
<u>2:33:38 PM</u>		10/5 Appellant. 11/18 Respondents. 12/16 Reply. Oral Argument 1-9 at 4 PM.
<u>2:33:55 PM</u>		END OF CASE

AUG 23 2013

CHRISTOPHER D. RICH, Clerk
By AMY LYCAN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Appellant,

Case No. CV-PC-2012-17517

vs.

ORDER GOVERNING
PROCEDURE ON APPEAL

STATE OF IDAHO,

Respondent.

Notice of Appeal having been filed herein, and it appearing that a transcript of all the testimony of the original trial or hearing is required by Appellant to resolve the issues on appeal:

It is ORDERED:

- 1) That Appellant shall order and pay for the estimated cost of the transcript within 14 days after the filing of the notice of appeal.
- 2) That Appellant's brief shall be filed and served on or before October 15th, 2013.
- 3) That Respondent's brief shall be filed and served on or before November 18th, 2013.
- 4) That Appellant's reply brief, if any, shall be filed and served on or before December 16th, 2013.
- 5) Oral Argument will be heard at the Ada County Courthouse, 200 W. Front Street Boise, Idaho on January 9th @ 4:00pm.

2014

Dated this 23rd day of August 2013.



MICHAEL MCLAUGHLIN
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of August, 2013 I mailed (served) a true and correct copy of the within instrument to:

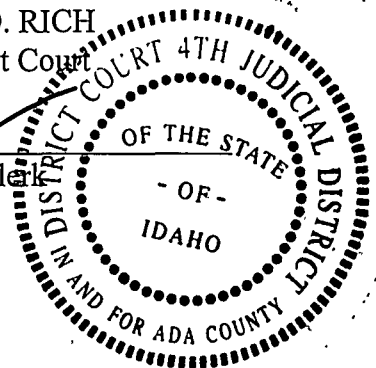
Ada County Transcripts Department
Interdepartmental Mail

Ada County Public Defender
Interdepartmental Mail

Ada County Prosecuting Attorney
Interdepartmental Mail

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk



Re-transcripts
1207

RECEIVED

AUG 26 2013

Ada County Clerk

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. 917 FILED
A.M. P.M.

SEP 12 2013

CHRISTOPHER D. RICH, Clerk
By ANNAMARIE MEYER
DEPUTY

MARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent,

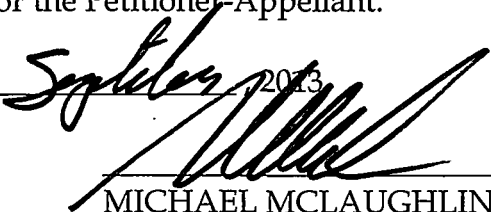
Case No. CV-PC-2012-17517

ORDER ALLOWING
WITHDRAWAL OF ATTORNEY

THIS MATTER having come before the Court pursuant to Petitioner-Appellant's Motion for Withdrawal of Appellant's Attorney, Appoint the Ada County Public Defender, and for Extension of Time to File Appellant's Brief, the Court having reviewed the pleadings on file and the motion; the Court being fully apprised in the matter and good cause appearing;

IT IS HEREBY ORDERED that Maria E. Andrade and Andrade Legal are withdrawn as counsel of record for the Petitioner-Appellant.

DATED THIS 11 day of September, 2013


MICHAEL MCLAUGHLIN
Senior District Judge

24

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2013, I caused a true and correct copy of the foregoing document to be served to the persons identified below by the method indicated:

Ralph Blount
Ada County Prosecuting Attorney's Office
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Boise, ID 83702

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☒ By Courthouse Box

Alan Trimming
ADA COUNTY PUBLIC DEFENDER
200 West Front Street
Boise, ID 83702
Fax: 208-287-7409

☐ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☒ By Courthouse Box

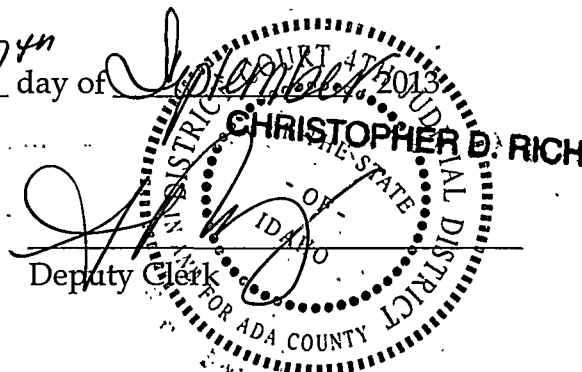
Kenneth K. Jorgensen
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, ID 83720-0010

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☐ By Courthouse Box

Maria E. Andrade
Andrade Legal
P.O. Box 2109
Boise, ID 83701

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/FedEx
☐ By Courthouse Box

DATED THIS 12th day of September, 2013



OCT 15 2013

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent-Respondent.

Case No. CV-PC-2012-17517

APPELLANT'S BRIEF

APPEAL FROM THE MAGISTRATE'S DIVISION OF THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF ADA

HONORABLE THERESA GARDUNIA
Presiding Judge

ALAN E. TRIMMING
Ada County Public Defender

KIMBERLY J. SIMMONS
Deputy Ada County Public Defender

Ada County Public Defender's Office
200 West Front Street, Suite 1107
Boise, Idaho 83702
(208) 287-7400

Attorneys for Petitioner-Appellant

GREG H. BOWER
Ada County Prosecutor

SHAWNA DUNN
Deputy Ada County Prosecutor

Ada County Prosecutor's Office
200 West Front Street, Suite 3191
Boise, Idaho 83702
(208) 287-7700

Attorneys For Respondent-Respondent

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STATEMENT OF THE CASE

Nature of the Case

Mr. Keserovic appeals Court's Order, filed January 28, 2013, granting the State's Motion for Summary Dismissal and denying Mr. Keserovic post-conviction relief where defense counsel provided ineffective assistance of counsel, and Mr. Keserovic was prejudiced by such ineffective assistance, and the Judgment of Dismissal, filed February 22, 2013.

Statement of the Facts and Course of Proceedings

On or about January 6, 2012, Mr. Haris Keserovic, a non-citizen, was arrested in Ada County for the crime of Grand Theft, pursuant to Idaho Code § 18-2407(1). A case was filed on January 9, 2012, bearing Ada County Case No. CR-FE-2012-311. On January 10, 2012, Mr. Jeffrey McKinnie, a licensed attorney practicing in Boise, Idaho, filed a Notice of Appearance on behalf of Mr. Keserovic. A Preliminary Hearing was waived on March 12, 2012, and the case was bound over to District Court. Mr. Keserovic was arraigned on an Information charging him with the crime of Grand Theft on April 4, 2012 and a not guilty plea was entered. The case was set for Pre-Trial Conference on June 20, 2012 and Jury Trial on June 25, 2012.

Mr. Keserovic filed a Notice pursuant to I.C. § 19-519 and Idaho Criminal Rule 12.1 on April 25, 2012, asserting an alibi defense. A stipulation to Continue the Jury Trial was filed on May 10, 2012, and after a hearing on May 16, 2012, the Jury Trial was rescheduled to July 16, 2012. At a hearing held on June 20, 2012, the case was remanded to the Magistrate Court pursuant to an offer from the State for Mr. Keserovic to plead guilty to the misdemeanor crime of Petit Theft pursuant to I.C. § 18-2407(2). On

the advice of counsel, Mr. Keserovic signed a written plea agreement pursuant to I.C.R. Rule 11(f)(1)(C), indicating he would plead guilty to Petit Theft, and agreeing to specific sentence as an appropriate disposition of the case. The sentence agreed upon consisted of a 365-day jail sentence, with 305 days suspended for a period of 2 years on supervised probation. The remainder of the jail sentence would be served in jail or in a work release program, if available. Fines and court costs were also included as a term of the agreement. On June 26, 2012, Mr. Keserovic entered a guilty plea, was convicted of a violation of I.C. § 18-2407(2) and sentenced pursuant to the Rule 11 agreement.

On or about September 10, 2012, Immigration and Customs Enforcement (hereinafter "ICE") assumed custody of Mr. Keserovic. He was held without bail pursuant to 8 U.S.C. § 1226(c)(1)(B). On September 26, 2012, Mr. Keserovic filed a Petition for Post-Conviction Relief seeking relief from the judgment of conviction entered in CR-FE-2012-311, and requested a new trial and/or other appropriate relief. Mr. Keserovic claimed that defense counsel provided ineffective assistance by providing inaccurate advice regarding the immigration consequences of pleading guilty to a violation of I.C. § 18-2407(2) with a 365-day sentence, and that such advice prejudiced Mr. Keserovic. Additionally, Mr. Keserovic asserted that the State and the Court's attempt to alert Mr. Keserovic to the possible immigration consequences of a plea to Petit Theft did not cure the prejudice he suffered from counsel's deficient performance.

The Petition for Post-Conviction Relief informed the Court that Mr. Keserovic was a native and citizen of Bosnia-Herzegovina who had been lawfully residing in the United States since 1998. Petition for Post-Conviction Relief, filed 9/26/12, p.1 (hereinafter

"PCR"). He fled Bosnia as a refugee in the wake of the Bosnian War. *Id.* He was admitted to the United States as a young boy and subsequently adjusted his status to that of a Lawful Permanent Resident (hereinafter "LPR"). *Id.* Mr. Keserovic's parents reside lawfully in the United States, as do his two younger brothers, and he is the father of a four-year old U.S. citizen son. *Id.* Additionally, Mr. Keserovic has extended family throughout the United States including an Aunt and numerous cousins. *Id.*

According to the PCR and attached affidavits, Mr. Keserovic informed Mr. McKinnie about his citizenship status as a non-citizen, and they discussed possible immigration consequences of a criminal conviction on more than one occasion. *Id.* See also Affidavit of Haris Keserovic, p.1 and Affidavit of Jeffrey McKinnie, p.1. Mr. Keserovic was visited by an immigration officer while he was in custody of the Ada County Jail who told him that he would be deported if he was convicted of a felony offense. Affidavit of Keserovic, p. 1. Mr. Keserovic passed this information on to his counsel, Mr. McKinnie. *Id.* Mr. McKinnie subsequently advised Mr. Keserovic of the offer to plead guilty to a misdemeanor petit theft, and advised him to take the offer. *Id.* See also Affidavit of McKinnie, p.1. He told Mr. Keserovic that he "wouldn't have any problems with immigration and that within sixty (60) days [he] would have [his] life back." Affidavit of Keserovic, p.1.

During the plea colloquy and sentencing hearing, the State's attorney and the Court both advised Mr. Keserovic that pleading guilty to the crime of petit theft subjected him to possible deportation. PCR, p.3. Mr. Keserovic leaned over to counsel, Mr. McKinnie, and inquired about such consequences, to which Mr. McKinnie replied, "They are just trying to scare you." Affidavit of Haris Keserovic, p.1. According to Mr.

McKinnie's affidavit, the State's attorney stated on the record that because the charge was a theft offense with a one year sentence, that Mr. Keserovic would be pleading guilty to a felony. Affidavit of McKinnie, p.1. Mr. McKinnie informed Mr. Keserovic that he was pleading guilty to a misdemeanor, not a felony. *Id.* Based upon counsel's advice, Mr. Keserovic continued with his guilty plea to the offense of petit theft as outlined in the Rule 11 agreement.

The State filed an Answer and a Motion for Summary Judgment on October 25, 2012. Petitioner Keserovic filed an Opposition to Respondent's Motion for Summary Disposition on November 5, 2012. Subsequent to a hearing on the State's Motion for Summary Dismissal held on December 13, 2012, the Court entered an Order Granting Summary Dismissal of Post-Conviction Motion Relief on January 28, 2013. A Judgment of Dismissal was entered on February 22, 2013. Mr. Keserovic now appeals the Court's Order granting summary dismissal and denying post-conviction relief and the Judgment of Dismissal.¹

¹ After proceedings in Federal Court, and during the pendency of Post-Conviction proceedings in this case, Mr. Keserovic was deported pursuant to his guilty plea in CR-FE-2012-311, as the plea resulted in a conviction of a crime defined by immigration laws as an "aggravated felony." 8 U.S.C. § 1101(a)(43)(G).

ISSUE

Did the Magistrate Court err when it granted the State's motion for summary dismissal and denied Mr. Keserovic post-conviction relief?

ARGUMENT

The Magistrate Court Erred When It Granted The State's Motion For Summary Dismissal And Denied Mr. Keserovic Post-Conviction Relief Because Mr. Keserovic Presented The Court With A Genuine Issue Of Material Fact And Provided Admissible Evidence Supporting His Claims

A. Introduction

In January 2013, Mr. Keserovic was stripped of his status as a Lawful Permanent Resident of the United States and ordered deported for having entered a guilty plea on advice of his trial counsel, Mr. McKinnie, to an offense that qualifies as an "aggravated felony" under the Immigration and Nationality Act. The result should not have surprised Mr. Keserovic because as a non-citizen defendant in criminal proceedings, he is guaranteed effective counsel, which includes the unequivocal advice that he would be deported if he plead guilty to Petit Theft under I.C. § 18-2407(2). *Padilla v. Kentucky*, 130 S.Ct. 1473, 1478 (2010). Had Mr. Keserovic had effective assistance of counsel, he would have been advised that such a plea would most certainly result in his deportation.

B. The Standard of Review

Mr. Keserovic sought post-conviction relief to withdraw a guilty plea that he alleges was entered unknowingly and involuntarily because defense counsel, Mr. McKinnie, failed to correctly advise him about the immigration consequences of his plea. Mr. Keserovic bears the burden of establishing that he is entitled to post-conviction relief by a preponderance of the evidence. *Goodwin v. State*, 138 Idaho 269, 271 (Ct. App. 2002). In a post-conviction petition based on a claim that trial counsel failed to

advise or misadvised the Petitioner about the immigration consequences of a criminal conviction, *Strickland* applies. *Padilla*, 130 S.Ct. at 1482 (2010); *Strickland v. Washington*, 466 U.S. 668 (1984).

An application for post-conviction relief initiates a proceeding which is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678 (1983); *Clark v. State*, 92 Idaho 827, 830 (1969); *Murray v. State*, 121 Idaho 918, 921 (Ct.App.1992). Summary dismissal of an application pursuant to I.C. § 19-4906 is the procedural equivalent of summary judgment under I.R.C.P. 56. Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67 (Ct.App. 1990). An application for post-conviction relief differs from a complaint in an ordinary civil action, as an application must contain much more than "a short and plain statement of the claim" that would suffice for a complaint under I.R.C.P. 8(a)(1). An application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal.

I.C. § 19-4906 authorizes summary disposition of an application for post-conviction relief, either pursuant to motion of a party or upon the court's own initiative. Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact which, if resolved in the applicant's favor, would entitle the

applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763 (Ct.App.1991); *Hoover v. State*, 114 Idaho 145, 146 (Ct.App.1988); *Ramirez v. State*, 113 Idaho 87, 89 (Ct.App.1987). Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Roman v. State*, 125 Idaho 644, 647 (Ct.App.1994); *Baruth v. Gardner*, 110 Idaho 156, 159 (Ct.App.1986).

On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this court must determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file; moreover, the court should liberally construe the facts and reasonable inferences in favor of the non-moving party. *Ricca v. State*, 124 Idaho 894, 896 (Ct.App.1993).

C. The Magistrate Court Erred When It Granted The State's Motion For Summary Dismissal And Denied Mr. Keserovic Post-Conviction Relief Because Mr. Keserovic Presented The Court With A Genuine Issue Of Material Fact And Provided Admissible Evidence Supporting His Claims

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of Counsel for his defense." U.S. Const. amend VI. Before deciding whether to plead guilty, a defendant is entitled to "the effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970); *Strickland v. Washington*, 466 U.S. at 686. A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Goodwin*, 138 Idaho at 272. To prevail on an ineffective

assistance of counsel claim, the defendant must show that the attorney's performance was deficient, and that the defendant was prejudiced by the deficiency. *Hassett v. State*, 127 Idaho 313, 316 (Ct.App. 1995); *Russell*, 118 Idaho at 67. To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760 (1988); see also *Russell*, 118 Idaho at 67. To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the trial would have been different. *Aragon*, 114 Idaho at 761; see also *Russell* 118 Idaho at 67.

In the case of *Padilla v. Kentucky*, the United States Supreme Court held that effective representation under the Sixth Amendment includes counseling a non-citizen defendant about the immigration consequences of a conviction. 130 S.Ct. 1473. Failing to correctly advise a defendant regarding his potential for deportation constitutes ineffective assistance of counsel under *Strickland*. *Id.* at 1481. Whether a defendant is entitled to relief, is dependent upon a showing of prejudice that the outcome would have been different based upon accurate advice under *Padilla*. *Aragon* at 761. Further, prejudice from the inaccurate, and misleading advice of counsel cannot be cured by the State or the Court as the obligation to provide accurate advice regarding immigration consequences falls on defense counsel. *Padilla* at 1486. Though statements from the court or the prosecutor regarding possible immigration consequences can play a useful role in stimulating conversation between the defendant and his attorney, they cannot substitute for the competent advice regarding the advisability of the guilty plea in light of

the immigration consequences. See *In re Resendiz*, 25 Cal. 4th 230, 240-42 (2001); and *State v. Paredes*, 136 N.M. 533, 537-38 (2004).

D. The Magistrate Court Did Not Err When It Found That Mr. McKinnie's Performance Was Deficient

The Magistrate Court correctly held that Mr. McKinnie's inaccurate advice to Mr. Keserovic regarding the immigration consequences of his plea to Petit Theft constituted ineffective assistance. Mr. McKinnie's performance as counsel was deficient within the meaning of *Padilla v. Kentucky* because the consequence of pleading guilty to Petit Theft with a 365-day sentence is virtually certain deportation. 130 S. Ct. 1473. As in *Padilla*, a simple reading of the Immigration and Nationality Act would have revealed that virtually certain deportation was the clear consequence of pleading guilty to theft with a 365-day sentence. *Padilla* at 1483; see also 8 U.S.C. § 1101(a)(43)(G) (identifying theft with a one year sentence as an "aggravated felony"); 8 U.S.C. § 1227(a)(2)(A)(iii) (rendering deportable "any alien who is convicted of an aggravated felony...."); 8 U.S.C. § 1182(a)(9)(A)(ii) (flush language) (alien inadmissible at any time if convicted of an aggravated felony).

Despite its holding, the Magistrate Court indicated in a footnote that the record was contradictory about advice given by counsel because counsel had discussions with his client regarding immigration consequences. See Order, p. 3, n.1. This conclusion presupposes that the advice was accurate and met the standard as required in *Padilla*. The fact that Mr. Keserovic and Mr. McKinnie both assert in their respective affidavits that they discussed immigration issues does not mean that the advice was accurate. A discussion regarding immigration consequences is not enough. The advice by counsel must be accurate. *Padilla*, 130 S.Ct. 1473. In this case, the Court's ultimate holding

was correct because the record is clear that Mr. McKinnie's advice was indeed inaccurate, failing to meet the standard of advice required by *Padilla*.

E. The Magistrate Court Erred When It Found That Mr. McKinnie's Deficient Performance Was Not Prejudicial

The Court was correct that Mr. Keserovic must show that Mr. McKinnie's deficient performance was prejudicial, but the holding that the Court and the State's attorney can cure that prejudice is error and must be reversed.

a. Mr. McKinnie's Deficient Performance Prejudiced Mr. Keserovic

The Magistrate Court erred when it found that Mr. Keserovic could not show that the result (plea) would have been different but for Mr. McKinnie's deficient performance. The Court's reasoning was that "[n]otice of the consequences of his plea was, according to the record, clearly provided." See Order, p.4. The Court continues by stating that whatever deficiency or prejudice existed was cured prior to Defendant entering his plea. *Id.* It is unclear whether the Magistrate Court found that Mr. McKinnie's deficient performance was prejudicial in and of itself. Petitioner's Counsel asserts that this lack of finding is error and further asserts that it is clear that Mr. McKinnie's deficient performance was prejudicial to Mr. Keserovic.

In the context of alleged deficiencies of counsel relating to guilty pleas, the specific standard for prejudice is whether "there is a reasonably probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Ridgley v. State*, 148 Idaho 671, 676 (2009). "[T]he focus is 'on the defendant's state of mind when choosing to plead guilty,' and there is no requirement that the Court speculate as to the potential sentence for a lesser charged offense

should the jury convict on that basis at retrial." *Booth v. State*, 151 Idaho 612, 622 (2011) (quoting *McKeeth v. State*, 140 Idaho 847, 853 (2004)).

The Magistrate Court was presented with admissible evidence that supported the claim that Mr. McKinnie's deficient performance was prejudicial. Mr. Keserovic came to the United States lawfully as a boy and has continued to live here since. Affidavit of Keserovic, p.1. The U.S. is the sole home he knows, and his safe haven. Moreover, he is the father of a four year old U.S. citizen child. *Id.*, p.2. Had Mr. Keserovic known that he would be banished from the U.S. for the rest of his life, it is more than probable that he would have sought different means to resolve his case or taken his chances at an acquittal at trial. It would have been rational for him to reject the plea deal he ultimately accepted. In his affidavit, Mr. Keserovic states, "There is no question that I would not admit guilt to the crime if I had known that this conviction would require my deportation. If I were able to do it again, I would not admit guilty [sic.] to theft and would take this case to trial." *Id.* Mr. Keserovic was so concerned with the immigration consequences that he raised the issue with Mr. McKinnie after he had been visited in jail by an immigration officer. *Id.*, p.1. The evidence indicates that Mr. McKinnie's advice to Mr. Keserovic was that he could plead guilty to a misdemeanor without the risk of deportation. *Id.* See also Affidavit of McKinnie, p.1.

Alternatively, had Mr. McKinnie correctly advised Mr. Keserovic, it is probable that Mr. Keserovic could have negotiated a deal in which he pled to the same offense but to a 364-day sentence, rather than a 365-day sentence. Such a sentence would have taken the crime outside the "aggravated felony" definition. 8 U.S.C. § 1101(a)(43)(G). It is likely that the prosecutor would have agreed to a 364-day

sentence, given the fact that the State agreed to amend the charge from a felony to a misdemeanor and further agreed to a suspension of the majority of the 365-day sentence. Clearly, the State was not interested in Mr. Keserovic's prolonged incarceration.

It is likely that the Court would have entered such a sentence, had it been presented to the Court as the product of a binding Rule 11 Plea Agreement between the parties. For the foregoing reasons, Mr. Keserovic undoubtedly suffered prejudice on account of Mr. McKinnie's deficient performance.

b. The Magistrate Court Erred When It Found That Any Prejudice From Counsel's Deficient Performance Was Cured By The State And The Court

The Magistrate Court held that because the State and the Court alerted Mr. Keserovic to the possibility of deportation, that any prejudice was cured prior to Mr. Keserovic entering his plea of guilty. See Order, p.4. The colloquy on the record, as outlined in the Court's order is as follows:

[PROSECUTOR:] Judge, I hate to do this to you but prior to accepting the plea of guilty, we just need to make it very clear on the record the State understands a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State's understating (sic) that this does subject Mr. Keserovic to deportation and so in entering this plea of guilty, we just want it very clear on the record that it does subject him to that potential. (TR pg. 4, 11-20).

The Court then inquired of Defendant's attorney whether he and the defendant had the (immigration) discussion, to which Defendant's counsel replied:

[DEFENSE COUNSEL:] On multiple occasions, Judge. We've talked about the fact that this could raise immigration issues with regard to entering a plea in this case. (TR pg.4, 23-25)

The Court, addressing Defendant, inquired:

[COURT:] So, Mr. Keserovic, you understand that by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or your ability to work in the United States? (TR pg. 5, 1-4).

Order, pp. 2-3. There are two specific errors in the Court's ruling: the State and the Court cannot act as a replacement for the ill advice of defense counsel as it is the burden of defense counsel to provide accurate advice; and, the notice of immigration consequences by the Court and the State in this case was insufficient under *Padilla*.

i. It Is The Burden Of Defense Counsel To Provide Accurate Advice Under *Padilla*

Padilla makes it evident that the non-citizen defendant's right to be informed of clear immigration consequences derives from the Sixth Amendment's right to counsel, and so it is irrelevant that the court or the prosecutor may have alerted Mr. Keserovic to the consequences of a guilty plea. In *Padilla*, the Supreme Court repeatedly stated that the obligation to provide accurate advice regarding immigration consequences falls on defense counsel. *Padilla* at 1482, 1486. Statements from the court or the prosecutor regarding possible immigration consequences can play a useful role in stimulating a conversation regarding immigration consequences between the defendant and his attorney, but they cannot substitute for competent advice regarding the advisability of the guilty plea in light of the immigration consequences, as required by the Sixth Amendment pursuant to *Padilla*. See *Resendiz*, 25 Ca1.4th at 240-42 (that a defendant may have received valid advisements [regarding immigration consequences] from the court does not entail that he has received effective assistance of counsel in evaluating or responding to such advisements."); *Paredes*, 136 N.M. at 537-38 (defense attorney "is in a much better position [than the court] to ascertain the personal circumstances of

his...client so as to determine what indirect consequences the guilty plea may trigger"). The Washington Supreme Court noted that the *Padilla* decision, in highlighting court notification requirements, was "underscore[ing] 'how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.'" *State v. Sandoval*, 249 P.3d 1015, 1020-21 (Wash. 2011) (emphasis in original) (*quoting Padilla* at 1486). Therefore, as the reasoning of the *Padilla* decision would be undercut by allowing court or prosecutor notifications to replace competent attorney advice, this Court should hold that a court or prosecutor notification is not an acceptable substitute for the competent advice required under the Sixth Amendment regarding the advisability of entering the guilty plea in light of the immigration consequences for several reasons.

The defendant is entitled to rely on his attorney's advice regarding the advisability of entering the guilty plea, as opposed to the court or the prosecutor's statements regarding possible immigration consequences, which is given without knowledge of the defendant's unique circumstances. Attorney competence is presumed under the Sixth Amendment. See *Strickland*, 466 U.S. at 689 (courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance"). Therefore, the defendant can also presume that his attorney, who is familiar with the details of his particular situation, has provided competent advice. See *State v. Yahya*, 2011 WL 5868794 *5 (Ohio App. 10 Dist. 2011) (despite court's statement that defendant might get deported, it "might have been reasonable for appellant to rely on her attorney's specific assurance that she would not be deported"); accord *Ex Parte Solitaria*, 2010 WL 2789032 (Tex. App.-Austin). This is well-illustrated in the instant case, where Mr. McKinnie told a concerned Mr. Keserovic that he would

not be deported because his crime was a misdemeanor. While Mr. McKinnie's statement that Idaho petit theft is a misdemeanor was correct, he was absolutely incorrect in stating that the crime was not an aggravated felony under the immigration laws. However, his statements to Mr. Keserovic had the hallmark of validity because it came from counsel. Therefore, it was reasonable for Mr. Keserovic to rely on his attorney's erroneous advice as opposed to the court and the prosecutor's general statement, given without knowledge of the defendant's individual circumstances, which mentions the possibility of a "negative effect" on immigration status.

Further, the court and the prosecutor's obligations under the Fifth Amendment are legally and practically distinct from defense counsel's responsibilities under the Sixth Amendment, and these distinctions render information provided during the plea colloquy and sentencing hearing an insufficient substitute for competent advice from the defense attorney given before the defendant decides to plead guilty. In *Powell v. Alabama*, the Supreme Court put it thusly:

[H]ow can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.

287 U.S. 45, 61 (1932). This cogent description of the distinct responsibilities of the judge (and, to some extent, the prosecutor) as opposed to defense counsel continues to reflect the functional division embodied in our constitutional jurisprudence, and mandates the conclusion that a court or prosecutorial notification regarding immigration

consequences cannot substitute for meaningful advice from defense counsel given before the defendant decides to enter a guilty plea.

Moreover, if defense counsel's failure to recognize the immigration consequences prevents him from negotiating a reasonable alternative plea that eliminates or mitigates these consequences, court or prosecutor notifications are unavailing to cure the prejudice flowing from that error. The *Padilla* Court specifically contemplated the use of immigration consequences information not only to inform a defendant's choice regarding a guilty plea, but also to inform defense negotiation strategy: "Counsel who possess the most rudimentary understanding of the deportation consequences...may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation." *Id.* at 1486. If the consequence to the defendant of counsel's failure to appreciate the immigration consequences is that the defendant loses the opportunity to negotiate a plea that mitigates or eliminates the immigration consequences, this type of prejudice is not addressed by a court or prosecutor notification once the negotiations have concluded. *Commonwealth v. Clarke*, 460 Mass. 30, 47 (2011) (one way to demonstrate prejudice pursuant to *Padilla* is that "there is a reasonable probability that a different plea bargain (absent such consequences) could have been negotiated"); *People v. Bautista*, 115 Cal.App.4th 229, 238-42 (2004) (defendant prejudiced by counsel's failure to "attempt to 'plead upward,' that is, pursue a negotiated plea for violation of a greater...offense" that carried less severe immigration consequences). Thus, this Court should hold that a court or prosecutor notification does not cure the prejudice that flows from defense

counsel's failure to negotiate a reasonable resolution that mitigates or eliminates the immigration consequences.

Finally, this Court should consider the context in which any judicial or prosecutorial warnings were given to the defendant. At the time the State and the Court addressed immigration consequences in this case, Mr. Keserovic had already conferred with counsel and decided on pleading guilty to petit theft with a 365-day sentence. The typical criminal defendant, when confronted with the formality of the plea colloquy and sentencing hearing, delivered in a language of legalese not easily understood by laymen, is unlikely to engage in a meaningful dialogue with the Court or the prosecutor about the decision to accept the plea agreement. The average defendant is even less likely to question the advice he has received from his trusted counsel because of statements by a judge or prosecutor during a generally scripted proceeding. To the extent that the court or the prosecutor phrases the consequences in a reasonably accurate fashion, the defendant cannot know whether the Court or the prosecutor has gotten it right. It is significant to note, that in this case, when Mr. Keserovic was confronted with the statements by the State and the Court regarding possible immigration consequences, he leaned over to defense counsel and inquired about their meaning. Mr. Keserovic was told that they were just trying to scare him, and advised he should go forward with this plea. See Affidavit of Haris Keserovic, p.1. Mr. McKinnie's advice at that time was to ignore the statements of the State and the Court, which again, was ill-advised and provided a clear implication to Mr. Keserovic that he would not face deportation if he plead guilty to petit theft with a 365-day sentence.

ii. The State And The Court Provided Inaccurate Notice To The Defendant Regarding Immigration Consequences, Thus The Notice Is Insufficient Under *Padilla* .....	18

A statement by a court or prosecutor that deportation is a "potential" consequence of a guilty plea does not put a defendant whose deportation is virtually certain on notice regarding the inevitability of deportation. *Padilla* at 1483 ("when the deportation consequence is truly clear,... the duty to give correct advice is equally clear."); accord *U.S. v. Bonilla*, 637 F.3d 980, 984 (9th Cir. 2011) ("A criminal defendant who faces almost certain deportation is entitled to know more than that it is possible that a guilty plea could lead to removal; he is entitled to know that it is a virtual certainty."); see also *Sandoval*, 249 P.3d 1015 (granting post-conviction relief and finding prejudice where defendant had signed a plea agreement containing warning about immigration consequences); *Salazar v. State*, No. 11-11-00029-CR, slip op. (Tex. Ct. App. Aug. 31, 2011); *State v. Nunez-Valdez*, 200 N.J. 129 (2009) (mandating revision of New Jersey's boilerplate warning to defendants that guilty plea "may" result in deportation where crime is aggravated felony); *People v. Garcia*, 907 N.Y.S.2d 398, 407 (N.Y. Sup. Ct. 2010) (holding "the Court's general warning will not automatically cure counsel's failure nor ease the consequent prejudice").

In this case, the State and the Court, as quoted in the Court's Order, advised Mr. Keserovic that he *may* face deportation based upon his guilty plea and conviction to petit theft with a 365-day sentence. This advice is far from clear that Mr. Keserovic would face virtual certain deportation based upon his plea and conviction. If *Padilla* requires defense counsel to give correct advice regarding deportation consequences if they are truly clear since deportation is an integral part of the penalty that may be

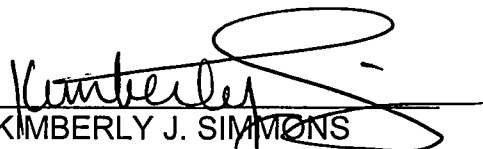
imposed, then how can inaccurate advice from the State and the Court serve as an adequate substitute? As aforementioned, the deportation consequences in this case were truly clear and could have been easily determined from reading the removal statute. Not only was defense counsel's advice in this case incorrect, but the statements made by the State and the Court to Mr. Keserovic at the plea colloquy were incorrect. Though Petitioner asserts that notice by the State and the Court can never serve as an appropriate alternate to the advice of defense counsel, in this case, the statements were incorrect and did not have the ability to cure any prejudice from Mr. McKinnie's deficient performance. Because these statements were inaccurate, Mr. Keserovic was never properly advised as to the immigration consequences as a result of his guilty plea in this case as required by *Padilla*. The record is clear on this fact, thus the Magistrate Court erred when it held otherwise.

CONCLUSION

Mr. Keserovic asserts that the Magistrate Court erred when it granted summary dismissal of his Petition for Post-Conviction Relief, thereby denying him relief. Mr. McKinnie's performance was indeed deficient, and such deficiency was prejudicial to Mr. Keserovic. Mr. Keserovic's Sixth Amendment Right to the effective assistance of counsel was violated, and he was prejudiced because but for the plethora of inaccurate advice regarding the consequences of his plea, Mr. Keserovic would have either exercised his right to a jury trial or negotiated a different plea bargain. Such deportation was virtually certain based upon his plea to I.C. § 18-2407(2) with a 365-day sentence, and he was *never* advised prior to entering his plea of that fact. Based upon the record, the Magistrate Court had ample admissible evidence that presented a material issue of

genuine fact even when viewed in favor of the non-moving party, thus the summary dismissal of his Petition for Post-Conviction Relief was error. The Court should have held an evidentiary hearing. Mr. Keserovic respectfully requests this Court vacate the Magistrate's Order Granting Summary Dismissal of Post Conviction Motion Relief and remand this case with an Order directing the Magistrate Court to grant relief on Mr. Keserovic's Post-Conviction claim or in the least, to hold an evidentiary hearing pursuant to Idaho Code §19-4907.

DATED this 15th day of October, 2013.


KIMBERLY J. SIMMONS
Deputy Ada County Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 15 day of October 2013, I mailed (served) a true and correct copy of the within instrument to:

Hon. Michael R. McLaughlin
District Court Judge
200 West Front Street
Boise, Idaho 83702

Shawna Dunn
Ada County Prosecutor's Office
Interdepartmental Mail

Haris Keserovic
Poljie 97
Bosnia and Herzegovina



Jacob R. Precht

Appeals Judge Mag
11-14-13
DS

NO. _____
A.M. _____ P.M. _____ **400**

NOV 13 2013

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Shawna Dunn

Deputy Prosecuting Attorney

Idaho State Bar No. 4606

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

CASE NO. CV-PC-2012-17517

RESPONDENT'S BRIEF

COMES NOW, Shawna Dunn, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and does hereby respond to Petitioner's Brief the above-entitled action as follows:

FACTUAL BACKGROUND

Mr. Keserovic was charged Grand Theft on January 9, 2012 for conduct that occurred November 23, 2011. He employed Jeff McKinnie to represent him. The incident involved the theft of a purse at a local grocery store. As described by Mr. McKinnie at the plea hearing:

"This was a theft that had occurred in Winco. It was all captured on video. It was a purse that was taken out of the victim's shopping cart. Three or four months later, Mr. Keserovic was contacted by the police, voluntarily went down. The

person in the video looked exactly like him. There was ample evidence to support that there was a factual basis for it. Mr. Keserovic said it looked like him but he didn't do it. ... Certainly there was enough evidence that he could have been convicted of this."

(Tr.,pg.10, ln.14 – pg.11, ln.3) Mr. Keserovic acknowledged that the person on camera committing the theft looked like him. (Tr., pg.13, lns.2-3.)

Despite the strength of the State's case, Mr. McKinnie successfully negotiated a Rule 11 plea deal reducing the Grand Theft to Petit Theft. Prior to the entry of that plea, Mr. Keserovic had spoken to an immigration officer in the jail. (See Keserovic's Affidavit page 1, paragraph 3.) The immigration officer informed Mr. Keserovic that he would be deported if he pled guilty to a felony. *Id.* During the plea hearing Mr. Keserovic was told on the record that,

"We just need to make it very clear on the record the State understands a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State's understanding that this does subject Mr. Keserovic to deportation and so in entering this plea of guilty, we just want it very clear on the record that he recognizes that it does subject him to that potential."

(Tr., pg. 4, lns.12-20.) The Court then inquired of Mr. McKinnie about whether he had conferred with his client on this subject, to which Mr. McKinnie responded, "On multiple occasions, Judge. We've talked about the fact that this could raise immigration issues with regard to entering a plea in this case." (Tr., pg. 4, lns. 23 –25.) The Court then inquired of Mr. Keserovic directly about whether he was aware that, "by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or your ability to work in the United States?" (Tr., pg.5, lns. 1-4.) Mr. Keserovic answered in the affirmative. The State was then asked for additional comment. Given that opportunity the State, again, emphasized Mr. Keserovic's immigration consequences, "I believe it has been discussed that it subjects him to deportation and so I don't have anything else to add after that." (Tr., pg. 10, lns. 6 – 8.)

Mr. Keserovic sought post-conviction relief, which was denied by the Magistrate Court. He now appeals from the order of dismissal from the magistrate judge.

STANDARD OF REVIEW

The State submits that this Court's review is pursuant to the standard of review generally utilized by the appellate courts in considering appeals of such matters.

“On review, the appellate court will not disturb the lower court's factual findings unless the factual findings are clearly erroneous. *Id.* at 700, 992 P.2d at 149. The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. *Peterson v. State*, 139 Idaho 95, 97, 73 P.3d 108, 110 (Ct.App.2003) (citing *Larkin v. State*, 115 Idaho 72, 764 P.2d 439 (Ct.App.1988)). When reviewing mixed questions of law and fact, this Court will defer to the factual findings of the district judge unless those findings are clearly erroneous. *Roberts v. State*, 132 Idaho 494, 496, 975 P.2d 782, 784 (1999). This Court exercises free review of the district court's application of the relevant law to the facts. *Id.*” *Dunlap v. State*, 141 Idaho 50, 56, 106 P.3d 376, 382 (2004) citing *McKinney v. State*, 133 Idaho 695, 92 P.2d 144 (1999).

The Magistrate Court rarely handles post-conviction cases, although a defendant, “convicted of, or sentenced for, a misdemeanor may seek post-conviction relief if he meets the requirements outlined in I.C. § 19-4901.” *Parsons v. State*, 113 Idaho 421, 424, 745 P.2d 300, 303 (Ct. App. 1987). Thus, the magistrate’s review of the original UPCA petition would under the same standard used by the district court in considering such petitions. For the Uniform Post Conviction claims the standard is well settled:

An application for post-conviction relief initiates a proceeding which is civil in nature. *State v. Bearshield*, 104 Idaho 676, 678, 662 P.2d 548, 550 (1983); *Clark v. State*, 92 Idaho 827, 830, 452 P.2d 54, 57 (1969); *Murray v. State*, 121 Idaho 918, 921, 828 P.2d 1323, 1326 (Ct.App.1992). Like a plaintiff in a civil action, the applicant must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. I.C. § 19-4907; *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct.App.1990). An application for post-conviction relief differs from a complaint in an ordinary civil action. An application must contain much more than “a short and plain statement of the claim” that would suffice for a complaint under I.R.C.P. 8(a)(1). Rather, an application for post-conviction relief must be verified with respect to facts within the personal knowledge of the applicant, and affidavits, records or other evidence supporting its allegations must be attached, or the application must state why such supporting evidence is not included with the application. I.C. § 19-4903. In other words, the application must present or be accompanied by admissible evidence supporting its allegations, or the application will be subject to dismissal. ...

Summary dismissal is permissible only when the applicant's evidence has raised no genuine issue of material fact that, if resolved in the applicant's favor, would entitle the applicant to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. *Gonzales v. State*, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct.App.1991); *Hoover v. State*, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct.App.1988); *Ramirez v. State*, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct.App.1987). ...

Summary dismissal of an application for post-conviction relief may be appropriate, however, even where the state does not controvert the applicant's

evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct.App.1994); *Baruth v. Gardner*, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct.App.1986).

Knutsen v. State, 144 Idaho 433, 437-8, 163 P.3d 222, 226-7 (Ct. App. 2007).

The Petitioner argues that his counsel was ineffective.

To prevail on a claim of ineffective assistance of counsel, a post-conviction petitioner must show that the attorney's performance was deficient and, in most cases, must also show that prejudice resulted from the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); *Berg v. State*, 131 Idaho 517, 520, 960 P.2d 738, 741 (1998); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct.App.1995); *Russell v. State*, 118 Idaho 65, 67, 794 P.2d 654, 656 (Ct.App.1990). Deficient performance is established if the applicant shows that the attorney's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; *Berg*, 131 Idaho at 520, 960 P.2d at 741; *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988); *Russell*, 118 Idaho at 67, 794 P.2d at 656. To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance *659 **43 the outcome of the criminal case would have been different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068, 80 L.Ed.2d at 697; *Berg*, 131 Idaho at 520, 960 P.2d at 741; *Aragon*, 114 Idaho at 761, 760 P.2d at 1177; *Russell*, 118 Idaho at 67, 794 P.2d at 656.

Mintun v. State, 144 Idaho 656, 658-59, 168 P.3d 40, 42-43 (Ct. App. 2007). In other words, the Petitioner must have established in the magistrate division that counsel's representation fell below an objective standard of reasonableness, the Defendant was prejudiced, and that the outcome of the case would have been different but for the deficient performance.

PADILLA

Padilla v. Kentucky, 559 U.S. 356 (2010) served to substantially change the post-conviction landscape. Collateral matters were previously believed to be outside the scope of Sixth Amendment analysis. *Id.* 365. See also *Chaidez v. U.S.*, ---U.S. ---, 133 S. Ct. 1103 (2013). In *Padilla* the Supreme Court expressed that the advice given on deportation issues could be raised on post-conviction cases and subject to scrutiny under *Strickland*. *Id.*

However, that inquiry must occur in cases about deportation advice as in every other case. *Padilla* did not develop a per se rule or presumption of prejudice. In fact, *Padilla* itself was remanded for further proceedings because, “[w]hether Padilla is entitled to relief will depend on whether he can demonstrate prejudice as a result thereof, a question we do not reach because

it was not passed on below.” *Padilla* at 375. The Supreme Court also said that, “to obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Id.* at 372.

Thus, even accepting that counsel gave incomplete or inaccurate advice, there must be a showing that a rejection of the plea bargain would have been rational and a showing of prejudice from counsel’s advice. In determining prejudice, the Court can consider the notice given by the State or the Court. In *U.S. v. Lozano*, the Ninth Circuit concluded:

Lozano challenges.... On the ground that his counsel was ineffective by failing to inform him of the possible immigration consequences of his plea, as required under *Padilla v. Kentucky*, 559 U.S. 356 (2010). The district court properly denied Lozano’s motion because he cannot demonstrate prejudice. Lozano was informed of the possible immigration consequences by the plea agreement and at the plea colloquy, and he has not shown that “a decision to reject the plea bargain would have been rational under the circumstances.”

U.S. v. Lozano, --- Fed.Appx.---, 2013 WL 5486732 (9th Cir 2013).¹ The State infers that it was the State that drafted the plea agreement, which informed Lozano of the deportation consequences of a plea, and the Court that conducted the plea colloquy on the same issues. Thus in the *Lozano* case, as here, correct information was given by the State and the Court. In *Lozano* that information was sufficient to prevent a showing of prejudice. Obviously, if the Defendant was given accurate notice of the consequences of plea on the record, that Defendant cannot convincingly say that their decision to plead guilty was mis-informed. Further, if a rational well-informed decision led to a plea, the Defendant will be in a difficult position in trying to establish either prejudice or that rejecting the plea would have been rational.

ANALYSIS

The Petitioner draws a parallel to *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). However, the essential difference is that in this case the Defendant was given the correct information prior to the acceptance of the plea. Padilla’s lawyer “provided false assurance that his conviction would not result in his removal from the country.” *Padilla* at 368. There is nothing in the opinion that reflects that he was *ever* given accurate notice of the consequences of his plea. Mr. Keserovic is in a very different position than Mr. Padilla in regard to the totality of information available to him. The record of the plea hearing in this case is clear. Unlike Mr. Padilla, whose

¹ While this opinion is not formally published and does not carry any precedential value, the State submits that it offers helpful insights and analysis.

only information apparently came from his attorney, Mr. Keserovic was carefully admonished on the open record. Hence, even making all factual assumptions to his benefit, Mr. Keserovic cannot meet the second prong of *Strickland*. For the Petitioner to say he would have pursued a trial if fully informed is disingenuous – he was *in fact* aware of the consequences, but chose to proceed with the plea. The Petitioner made his own choice after being clearly advised. Accordingly, no prejudice can attach even assuming *arguendo* that counsel gave the Petitioner incomplete information.

Even if the court found that the Petitioner was similarly situated to Padilla regarding the quality of advice received, that would not be the end of the inquiry. The Petitioner would have to establish prejudice and that rejection of the plea agreement would have been rational given proper notice. The State submits such a showing is impossible where proper notice was given. Further, given the nature of the case, exercising his right to a jury trial would have likely meant that he would be convicted of Grand Theft, with all of the accompanying consequences in the United States, followed by deportation anyway. There was surveillance video of the Defendant stealing the victim's purse. Even the defense conceded that the person stealing the bag looks "exactly" like the Defendant. (Tr., pg. 10, lns. 14-20; pg. 13, lns. 2-3.) The choice to avoid felony consequences was rational. A decision to reject the plea agreement would not have been.

Counsel for the Petitioner cites *Padilla* for the premise that "inaccurate and misleading advice of counsel cannot be cured by the State or the Court as the obligation to provide accurate advice regarding immigration consequences falls on defense counsel." (Appellate Brief, Pg. 9) *Padilla* does not state or imply whether the ineffectiveness of counsel can be cured. The section cited by the Petitioner indicates only that the criminal defense counsel has a responsibility to inform clients of the risk of deportation. That is a far cry from saying that any ineffectiveness cannot be cured. Further, in other portions of the text, *Padilla* makes clear that there must be a showing of prejudice, specifically that the "decision to reject the plea bargain would have been rational under the circumstances." *Id.* at 372.

Despite the above statement, Petitioner concedes that *Padilla* still requires a showing of prejudice. (Appellate Brief, Pg. 11.) The Petitioner made claims regarding prejudice in his affidavit. However, the Court was entitled to review all the evidence and determine what weight to give each item of evidence. Thus, the Court was not required to *believe* the Petitioner when he claimed he would not have pled guilty but for counsel's advice. The Court was also entitled to

look at the other evidence, including the conversation that occurred on the record at the plea hearing. For the Petitioner to say he would have pursued a trial if fully informed is disingenuous – he was *in fact* aware of the consequences, but chose to proceed with the plea. The Petitioner made his own choice after being clearly advised. Accordingly, no prejudice can attach even assuming *arguendo* that counsel gave the Petitioner incomplete information.

Here the State made two different statements notifying Mr. Keserovic that he would be subject to deportation. The Court also covered this area as well. The original petition stated, “to the extent that the court or the prosecutor phrases the consequences in a reasonably accurate fashion, the defendant cannot know whether by chance to the judge or the state has gotten it right.” (Appellate Brief, Pg. 19.) The State takes this as a concession that the notice given by the State and the Court at the plea hearing was “reasonably accurate,” from the Petitioner’s perspective. Accordingly, even according to the Petitioner’s current position, he was given reasonably accurate notice and chose to proceed with his plea.

The Petitioner now argues that the use of the word “potential” by the State during the plea hearing is problematic. The State did use that word. (Tr., pg. 4, lns. 18-20.) It did so *after* advising the Court and counsel that, “the State understands a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State’s understanding that this does subject Mr. Keserovic to deportation.” The State did go on to say, “we just want it very clear on the record that he recognizes that it does subject him to that potential.” (Tr., pg. 4, lns. 13-18; pg. 10, lns. 6-8.) However, that use of the word potential in no way minimizes or contradicts the accurate information the State gave about the nature of the offense or the fact that it would subject Mr. Keserovic to deportation. In fact, the State emphasized the point, saying in a separate section of the proceedings, “I believe it has been discussed that it subjects him to deportation and so I don’t have anything else to add after that.” (Tr., pg. 10, lns. 6 – 8.) The Court also inquired of Mr. Keserovic, “you understand that by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or your ability to work in the United States?” To which the Petitioner responded, “Yes, Ma’am.” This is clear, unequivocal notice.

Taken on whole the notice to Mr. Keserovic was clear and not tarnished by the word potential. Even if that word could be seen as communicating a conditional or possible outcome,

rather than a mandatory one, that is not enough to establish prejudice. In *U.S. Valedon*, 496 Fed.Appx 744 (9th Cir. 2012), a similar argument was made regarding the word “could.” Specifically, Valedon claimed that the district court advised that, “there ‘could’ be immigration consequences to his conviction, not that such consequences were mandatory. *Valedon* 496 Fed. Appx at 747. The appellate court concluded that the use of the word “could” did not invalidate his plea or violate the Rule 11. *Id.* The Court went on to conclude that *Padilla* did not require a different result. *Id.*

The Petitioner alleges that because the notice was given at the plea hearing, it should be given no weight. (Appellant’s Brief. Pg. 18.) This is simply self-serving rationalization. Numerous important waivers of a defendant’s constitutional rights are discussed at plea hearings. To argue that defendants are not capable of listening to and internalizing those discussions flies in the face of American Jurisprudence.

Further, the Petitioner argues that the State would likely have agreed to a 364 day sentence if counsel sought the same. There is no evidence in the record that Mr. Keserovic was in a position to successfully negotiate with the State for a one-day reduction in his sentence. Appellate counsel openly speculates that such an agreement could have been reached – however that speculation has no basis. There is no affirmative evidence of the same and the Petitioner could not meet his burden at the magistrate level by simply having post-conviction counsel guess. The procedural history is such that the State did give the Defendant a significant benefit by reducing the underlying charge. There is no fair inference that the State would necessarily continue to improve Mr. Keserovic’s position.


CONCLUSION

The Magistrate’s findings and conclusions on mixed questions of law and fact are not clearly erroneous, thus this Court should uphold them. The Magistrate’s ruling was well

reasoned and consistent with the legal standards set forth in this area. The State asks this Court to affirm the Magistrate's Order of Dismissal.

DATED this 12th day of November 2013

GREG H. BOWER
Ada County Prosecuting Attorney

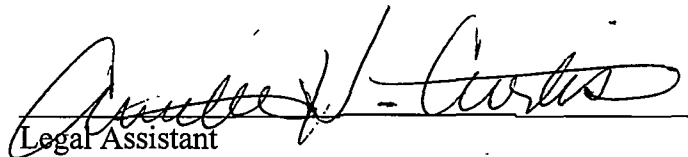

By: Shawna Dunn
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2013, I caused to be served, a true and correct copy of the foregoing Respondent's Brief upon the individual(s) named below in the manner noted:

Name and address: **Kimberly Simmons, Ada County Public Defender's Office**

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☒ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____


Legal Assistant

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>3:52:49 PM</u>		CV-PC-12-17517 Keserovic vs. State of Idaho Oral Argument
<u>3:53:05 PM</u>		Ms. Simmons for the appellant, Ms. Dunn for the State
<u>3:55:30 PM</u>	Ms. Simmons	My argument will be brief, I will rely on what I submitted. The appeal of the summary dismissal. Magistrate court erred in the finding that the petitioner could not establish prejudice. Send it back down for an evidentiary hearing.
<u>3:57:17 PM</u>	Ms. Simmons	He would have been deported if he had been convicted and plead guilty to a theft and one year sentence. That was not the advice ever given to him. The court said it could affect his citizenship or his ability to work. Immigration consequences complex. A plea has to be voluntary and a competent advice of counsel.
<u>4:00:38 PM</u>	Ms. Simmons	He came to the US as a young man and his family is all here. He would have made a different decision if he knew he would be banished from the US for life.
<u>4:01:12 PM</u>	Ms. Dunn	I note that counsel correctly articulates whether a material issue of fact here, there is no legal right to the remedy which is a withdrawal of the plea. Clear record that he was advised. I understand counsels statement. Here we have multiple things on the record, page 4. He spoke to an immigration officer.
<u>4:02:41 PM</u>	Ms. Dunn	Reads page 4 of transcript. He had raised the idea of bad immigration consequences. Additional questing by the court, reads. Reads page 10. Advice was given very clearly, very openly and before a plea was taken. Although it is a misdemeanor it had consequences for him. We thought he made a knowing plea. He had been told the feds would come for him. Choices he made. US vs. Lazono
<u>4:10:19 PM</u>	Ms. Simmons	Unpublished opinion from the 9th circuit. The advice was incorrect, not all felony's are aggravated in immigration court. Whether the advice was proper, I think what the court said is what we need to look at and I don't think it was clear. Conflicting advice from the State, when he asks the court her advice is not clear.
<u>4:12:15 PM</u>	Judge	I will take the matter under advisement
<u>4:12:22 PM</u>		END OF CASE
<u>4:12:29 PM</u>		

NO. _____
A.M. _____ P.M. 1115

JAN 14 2014

CHRISTOPHER D. RICH, Clerk
By: JEFFREY ABBOTT
CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2012-17517

MEMORANDUM DECISION
AND ORDER

ATTORNEY FOR THE APPELLANT: KIMBERLY SIMMONS

ATTORNEY FOR THE RESPONDENT: SHAWNA DUNN

This case is before the Court on the Petitioner's (Mr. Keserovic's) appeal from the decision of Magistrate Judge Theresa Gardunia, dismissing his petition seeking post-conviction relief. For the reasons that follow, Judge Gardunia's decision will be reversed and this case will be remanded for Judge Gardunia to hold an evidentiary hearing.

FACTS AND PROCEDURAL HISTORY

The following procedural statement is taken from Mr. Keserovic's brief and appears to essentially be undisputed:

On or about January 6, 2012, Mr. Haris Keserovic, a non-citizen, was arrested in Ada County for the crime of Grand Theft, pursuant to Idaho Code § 18-2407(1). A case was filed on January 9, 2012, bearing Ada County Case No. CR-FE-2012-311. On January 10, 2012, Mr. Jeffrey McKinnie, a licensed attorney practicing in Boise, Idaho, filed a Notice of Appearance on behalf of Mr. Keserovic. A Preliminary Hearing was waived on March 12, 2012, and was bound over to the District Court. Mr. Keserovic was arraigned on Information charging him with the crime of Grand Theft on April 4, 2012 and a not guilty plea was entered. The case was set for Pre-Trial Conference on June 20, 2012 and Jury Trial on June 25, 2012.

Mr. Keserovic filed a Notice pursuant to I.C. § 19-519 and Idaho Criminal Rule 12.1 on April 25, 2012, asserting an alibi defense. A stipulation to continue the Jury Trial was filed on May 10, 2012, and after a hearing on May 16, 2012, the Jury Trial was rescheduled to July 16, 2012. At a hearing held on June 20, 2012, the case was remanded to the Magistrate Court pursuant to an offer from the State for Mr. Keserovic to plead guilty to the misdemeanor crime of Petit Theft pursuant to I.C. § 18-2407(2). On the advice of counsel, Mr. Keserovic signed a written plea agreement pursuant to I.C.R. 11(f)(1)(C), indicating he would plead guilty to Petit Theft, and agreeing to specific sentence as an appropriate disposition of the case. The sentence agreed upon consisted of a 365-day jail sentence, with 305 days suspended for a period of 2 years on supervised probation. The remainder of the jail sentence would be served in jail or in a work release program, if available. Fines and court costs were also included as a term of the agreement. On June 26, 2012, Mr. Keserovic entered a guilty plea, was convicted of a violation of I.C. § 18-2407(2) and sentenced pursuant to the Rule 11 agreement.

On or about September 10, 2012, Immigration and Customs Enforcement (hereinafter 'ICE') assumed custody of Mr. Keserovic. He was held without bail pursuant to 8 U.S.C. § 1226(c)(1)(B). On September 26, 2012, Mr. Keserovic filed a Petition for Post-Conviction Relief seeking relief from the judgment of conviction entered in CR-FE-2012-311, and requested a new trial and/or other appropriate relief. Mr. Keserovic claimed that defense counsel provided ineffective assistance by providing inaccurate advice regarding the immigration consequences of pleading guilty to a violation of I.C. § 18-2407(2) with a 365 day sentence, and that such advice prejudiced Mr. Keserovic. Additionally, Mr. Keserovic asserted that the state and the court's attempt to alert [him] to the possible immigration consequences of a plea to Petit Theft did not cure the prejudice he suffered from counsel's deficient performance.

The Petition for Post-Conviction Relief informed the Court that Mr. Keserovic was a native and citizen of Bosnia-Herzegovina who had been

lawfully residing in the United States since 1998. Petition for Post-Conviction Relief, filed 9/26/12, p.1 (hereinafter 'PCR'). He fled Bosnia as a refugee in the wake of the Bosnian War. *Id.* He was admitted to the United States as a young boy and subsequently adjusted his status to that of a Lawful Permanent Resident (hereinafter 'LPR'). *Id.* Mr. Keserovic's parents reside lawfully in the United States, as do his two younger brothers, and he is the father of a four-year old U.S. citizen son. *Id.* Additionally, Mr. Keserovic has extended family throughout the United States including an Aunt and numerous cousins. *Id.*

According to the PCR and attached affidavits, Mr. Keserovic informed Mr. McKinnie about his citizenship status as a non-citizen, and they discussed possible immigration consequences of a criminal conviction on more than one occasion. *Id.* See also Affidavit of Haris Keserovic, p.1 and Affidavit of Jeffrey McKinnie, p.1. Mr. Keserovic was visited by an immigration officer while he was in custody of the Ada County Jail who told him that he would be deported if he was convicted of a felony offense. Affidavit of Keserovic, p. 1. Mr. Keserovic passed this information on to his counsel, Mr. McKinnie. *Id.* Mr. McKinnie subsequently advised Mr. Keserovic of the offer to plead guilty to a misdemeanor petit theft, and advised him to take the offer. *Id.* See also Affidavit of McKinnie, p.1. He told Mr. Keserovic that he 'wouldn't have any problems with immigration and that within sixty (60) days (he) would have (his) life back.' Affidavit of Keserovic, p.1.¹

During the plea colloquy and sentencing hearing, the State's attorney and the Court both advised Mr. Keserovic that pleading guilty to the crime of petit theft subjected him to possible deportation. PCR, p.3. Mr. Keserovic leaned over to counsel, Mr. McKinnie, and inquired about such consequences, to which Mr. McKinnie replied, 'They are just trying to scare you.' Affidavit of Haris Keserovic, p.1.² According to Mr. McKinnie's affidavit, the State's attorney stated on the record that because the charge was a theft offense with a one year sentence, that Mr. Keserovic would be pleading guilty to a felony. Affidavit of McKinnie, p.1. Mr. McKinnie informed Mr. Keserovic that he was pleading guilty to a misdemeanor, not a felony. *Id.* Based upon counsel's advice, Mr. Keserovic continued with his guilty plea to the offense of petit theft as outline in the Rule 11 agreement.

The State filed an Answer and a Motion for Summary Judgment on October 25, 2012. Petitioner Keserovic filed an Opposition to Respondent's Motion for Summary Disposition on November 5, 2012. Subsequent to a hearing on the State's Motion for Summary Dismissal

¹It is undisputed that Mr. Keserovic asserts that this is what Mr. McKinnie told him, not that this is what he actually told him.

²See preceding note.

held on December 13, 2012, the Court entered an Order Granting Summary Dismissal of Post-Conviction Relief on January 28, 2013. A Judgment of Dismissal was entered on February 22, 2013. Mr. Keserovic now appeals the Court's Order granting summary dismissal and denying post-conviction relief and the Judgment of Dismissal. Appellant's Brief, at 1-4.³

Judge Gardunia noted the following in her order granting summary dismissal:

Defendant's singular issue in this matter is that his criminal attorney failed to properly advise him that the crime to which he was pleading, although a state misdemeanor, is considered an aggravated felony for purposes of the I[N]A [the Immigration and Naturalization Act]. Defendant's criminal attorney has filed an affidavit and that affidavit supports Defendant's claim that the attorney failed to properly advise him of the certain deportation consequences of entering a plea to the misdemeanor charge. However, to prevail in a Post-Conviction Relief case, Defendant must also show that his counsel's deficiency prejudiced him.

Prejudice would indicate that the Defendant was denied of due process in this matter in that his attorney's failure to inform him of the immigration consequences of his plea resulted in a plea that was not knowingly, voluntarily or intelligently made. *However, the record belies this finding.* At a point prior to Defendant's plea, the state's attorney interjected the following:

"Judge, I hate to do this to you but prior to accepting the plea of guilty, we just need to make it very clear on the record the State understands a petit theft with 365 days as being what the ICE or the federal government determines to be an aggravated felony even though it is a misdemeanor. It is the State's understanding that this does subject Mr. Keserovic to deportation and so in entering this plea of guilty, we just want it very clear on the record that it does subject him to that potential." (TR pg. 4, 11-20).

The Court then inquired of Defendant's attorney whether he and the defendant had the (immigration) discussion, to which Defendant counsel replied:

³In a footnote, Mr. Keserovic states "[a]fter proceedings in Federal Court, and during the pendency of Post-Conviction proceedings in this case, Mr. Keserovic was deported pursuant to his guilty plea in CR-FE-2012-311, as the plea resulted in a conviction of a crime defined by immigration laws as an 'aggravated felony.' 8 U.S.C. § 1101(a)(43)(g)." *Id.*, at n.1. See 8 U.S.C. § 1101(a)(43) ("The term 'aggravated felony' means . . . (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year."

On multiple occasions, Judge. We've talked about the fact that this could raise immigration issues with regard to entering a plea in this case. (TR pg. 4, 23-25).

The Court, addressing Defendant, inquired:

So, Mr. Keserovic, you understand that by entering a plea of guilty to this charge this morning that it could affect your citizenship, your application for citizenship or your ability to work in the United States? (TR pg. 5, 1-4)[.]

To which Defendant replied, 'Yes, ma'am[.]' (TR pg. 5, 5)[.]

Defendant claims he was prejudiced because his attorney did not properly advise him of the immigration consequences of his plea and that the state and court's advisory prior to his plea is insufficient. The court does not find *Padilla* to cut such a fine point. In *Padilla*, there was no immigration advisory at all. Courts nationwide engage in plea colloquies with defendants for the precise reason that the court is not privy to conversations with counsel. These inquiries ensure that, notwithstanding previous conversations with counsel, a defendant is aware of what rights he has, what rights he is giving up, and the consequences of a plea. Most importantly, the plea colloquy provides a record that any plea being taken is knowingly, voluntarily and intelligently entered.

Here, a finding that Defendant's criminal attorney's performance was deficient is supported by the record based on the attorney's affidavit attached to Defendant's motion.⁴ However, Defendant must still show that but for that deficient performance the result (plea) would have been different. This the defendant cannot do. Notice of the consequence of his plea was, according to the record, clearly provided. Whatever deficiency or prejudice as a result of Defendant's attorney's performance was cured prior to Defendant entering his plea; therefore his Motion for Post-Conviction Relief is denied. Order Granting Summary Dismissal of Post Conviction Motion Relief, at 1-4.

⁴Judge Gardunia noted "[t]he record in this regard is contradictory. At the time of sentencing, Defendant's criminal attorney stated that he and Defendant had conversations regarding immigration issues 'on multiple occasions.' In his affidavit however, counsel states that he was unaware that the misdemeanor charge was an aggravated felony under INA and therefore would subject Defendant to certain deportation." Order Granting Summary Dismissal of Post Conviction Motion Relief, at 1, n.1.

STANDARD OF REVIEW

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The interpretation of law or statute is a question of law over which the Court has free review. *State v. Miller*, 134 Idaho 458, 462, 4 P.3d 570, 574 (Ct. App. 2000).

“When reviewing a . . . court’s decision to grant or deny a petition for post-conviction relief following an evidentiary hearing, this Court will not disturb the . . . court’s factual findings unless they are clearly erroneous. A claim of ineffective assistance of counsel presents a mixed question of fact and law. When faced with a mixed question of fact and law, the Court will defer to the . . . court’s factual findings if supported by substantial evidence, but will exercise free review over the application of the relevant law to those facts.” *Booth v. State*, 151 Idaho 612, 617, 262 P.3d 255, 260 (2011) (internal citations omitted).

“A petition for post-conviction relief initiates a civil, rather than criminal, proceeding, governed by the Idaho Rules of Civil Procedure. Like plaintiffs in other civil actions, the petitioner must prove by a preponderance of evidence the allegations upon which the request for post-conviction relief is based. A petition for post-conviction relief differs from a complaint in an ordinary civil action, however, in that it must contain more than ‘a short and plain statement of the claim’ that would suffice for a complaint under I.R.C.P. 8(a)(1). The petition must be verified with respect to facts within the personal knowledge of the petitioner, and affidavits, records or other evidence supporting its allegations must be attached, or the petition must state why such supporting evidence is

not included. In other words, the petition must present or be accompanied by admissible evidence supporting its allegations, or it will be subject to dismissal.” *Schultz v. State*, 153 Idaho 791, 795-96, 291 P.3d 474, 478-79 (Ct. App. 2012) (internal citations omitted).

“Idaho Code Section 19-4906 authorizes summary dismissal of a petition for post-conviction relief, either pursuant to motion of a party or upon the court's own initiative, if ‘it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of facts, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’ I.C. § 19-4906(c). When considering summary dismissal, the district court must construe disputed facts in the petitioner's favor, but the court is not required to accept either the petitioner's mere conclusory allegations, unsupported by admissible evidence, or the petitioner's conclusions of law. Moreover, because the district court rather than a jury will be the trier of fact in the event of an evidentiary hearing, the district court is not constrained to draw inferences in the petitioner's favor, but is free to arrive at the most probable inferences to be drawn from the evidence. Such inferences will not be disturbed on appeal if the uncontroverted evidence is sufficient to justify them.” *Id.*, at 796, 479.

“Claims may be summarily dismissed if the petitioner's allegations are clearly disproven by the record of the criminal proceedings, if the petitioner has not presented evidence making a prima facie case as to each essential element of the claims, or if the petitioner's allegations do not justify relief as a matter of law. Thus, summary dismissal of a claim for post-conviction relief is appropriate when the court can conclude, as a

matter of law, that the petitioner is not entitled to relief even with all disputed facts construed in the petitioner's favor. For this reason, summary dismissal of a post-conviction petition may be appropriate even when the State does not controvert the petitioner's evidence." *Id.*

"Conversely, if the petition, affidavits, and other evidence supporting the petition allege facts that, if true, would entitle the petitioner to relief, the post-conviction claim may not be summarily dismissed. If a genuine issue of material fact is presented, an evidentiary hearing must be conducted to resolve the factual issues." *Id.*, at 796-97, 479-80.

"On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief. Over questions of law, we exercise free review." *Id.*, at 797, 480.

"To prevail on an ineffective assistance of counsel claim, the defendant must show that his attorney's performance was deficient and that the defendant was prejudiced by the deficiency. To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. To establish prejudice, the applicant must show a reasonable probability that, but for the attorney's deficient performance, the outcome of the proceeding would have been different." *Id.*

ANALYSIS

In this appeal, Mr. Keserovic contends “the magistrate . . . erred when it granted the state’s motion for summary dismissal and denied [him] post-conviction relief because [he] presented the court with a genuine issue of material fact and provided admissible evidence supporting his claims.” Appellant’s Brief, at 6. Specifically, Mr. Keserovic argues that “[t]he magistrate . . . erred when [she] found that Mr. McKinnie’s deficient performance was not prejudicial.” *Id.*, at 11. He argues that had he “known that he would be banished from the U.S. for the rest of his life, it is more than probable that he would have sought different means to resolve his case or taken his chances at an acquittal at trial . . . Alternatively, had Mr. McKinnie correctly advised Mr. Keserovic, it is probable that [he] could have negotiated a deal in which he pled to the same offense but to a 364-day sentence, rather than a 365-day sentence. Such a sentence would have taken the crime outside the ‘aggravated felony’ definition. 8 U.S.C. § 1101(a)(43)(G). It is likely that the prosecutor would have agreed to a 364-day sentence, given the fact that the State agreed to amend the charge from a felon to a misdemeanor and further agreed to a suspension of the majority of the 365-day sentence. Clearly, the State was not interested in Mr. Keserovic’s prolonged incarceration.” *Id.*, at 12-13.

“The right to counsel in criminal actions brought by the state of Idaho is guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Idaho State Constitution.’ A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney’s

performance was deficient and that the defendant was prejudiced by the deficiency. This Court applies the *Strickland* test⁵ when determining whether a defendant has received ineffective assistance of counsel during the plea process. Before deciding whether to plead guilty, a defendant is entitled to ‘the effective assistance of competent counsel.’” *Booth*, 262 P.3d at 260.

“In order to demonstrate the attorney’s performance was deficient, the defendant has the burden of showing that the attorney’s representation fell below an objective standard of reasonableness. In doing so, the defendant must overcome a strong presumption that counsel was competent and diligent in his . . . representation of the defendant. Furthermore, ‘tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law or other shortcomings capable of objective evaluation.’” 262 P.3d at 261.

“Where a defendant is represented by counsel during the plea process and enters a plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel’s advice was within the range of competence demanded of attorneys in criminal cases.’ Specifically, *a guilty plea is only valid where the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.*” *Id.* (Emphasis added).

The Idaho Supreme Court noted in *Booth* that “in *Padilla v. Kentucky*, the Court held that an attorney engaged in deficient performance by failing to advise the defendant that his plea of guilty to drug distribution made him subject to automatic

⁵*Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

deportation because the consequences of the defendant's guilty plea could easily be determined from reading the removal statute. ___U.S.___, 130 S.Ct. at 1483, 176 L.Ed.2d at 295."

The Court reasoned that,

'In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit in defining the removal consequence for Padilla's conviction . . . Padilla's counsel could have easily determined that his plea would make him eligible for deportation simply from reading the text of the statute, which addresses not some broad classification of crimes but specifically commands removal for all controlled substances convictions except for the most trivial of marijuana possession offenses. Instead, Padilla's counsel provided him false assurance that his conviction would not result in his removal from this country. This is not a hard case in which to find deficiency: *The consequences of Padilla's plea could easily be determined from reading the removal statute, his deportation was presumptively mandatory, and his counsel's advice was incorrect.*' *Id.* (Emphasis added).

Although the Court recognized that an attorney engages in deficient performance by rendering advice that is inconsistent with the clear provisions of a statute, the Court was careful to recognize that the result would not be the same where the law is not as clear.

There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain. The duty of the private practitioner in such cases is more limited. *When the law is not succinct and straightforward . . . a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.*' 262 P.3d at 261-62. (Emphasis added).

Mr. McKinnie stated in his affidavit that he "did not know that the misdemeanor petit theft under state law is defined as an 'aggravated felony' in immigration law. I now understand that it is virtually certain Mr. Kešerović will be subject to mandatory removal

for accepting the resolution that I recommended to him.” Affidavit of Jeffrey McKinnie, at 1.

“At no time did I inform Mr. Keserovic that his conviction for misdemeanor petit theft with a one year suspended sentence would be an aggravated felony under immigration law . . . and it would eliminate his eligibility for any discretionary relief from removal from an Immigration Judge . . . During the court proceeding, I recall that the prosecutor said that Mr. Keserovic was pleading guilty to a felony because it was a theft offense with one year sentence and the court saying something about the conviction affecting his immigration status generally. Mr. Keserovic turned to me after these statements were made. I don’t remember exactly what he said, but I recall that he stated he did not want to plead guilty to a felony. I told him that he was pleading guilty to a misdemeanor, not a felony.” *Id.*

This is not a situation where the immigration consequences of this conviction are unclear or uncertain. “A resident alien convicted of an aggravated felony is subject to mandatory deportation, which cannot be cancelled. 8 U.S.C. § 1229b(a)(3).”⁶ *United States v. Sidhana*, 2013 WL 5435050, *1 (D. N.J.).

Since it could have been easily ascertained that the conviction here would subject Mr. Keserovic to mandatory deportation, it was error for him not to be informed of this fact by his attorney, prior to entering his guilty plea.

⁶8 U.S.C. § 1229b(a): “Cancellation of removal for certain permanent residents . . . The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien . . . (3) has not been convicted of any aggravated felony.”

The Court also finds that neither the state nor the court's admonitions to him, prior to his guilty plea entry, cured or eliminated the resulting prejudice.⁷

The state informed Mr. Keserovic that he potentially could be deported, as a result of this conviction. See June 26, 2012 Hearing Transcript, at 4. The state did not inform him that deportation was mandatory. Similarly, the court advised him that the conviction could affect his citizenship, his application for citizenship, or his ability to work in the United States. *Id.*, at 5. The court did not inform Mr. Keserovic that this conviction would result in his mandatory deportation from the United States.

Viewing the evidence in a light favorable to Mr. Keserovic, the Court finds that trial counsel's performance fell below an objective standard of reasonableness. The Court also finds, viewing the evidence in a light favorable to him, that there is a reasonable probability that but for counsel's deficient performance, it is not likely that he would have entered his guilty plea here. In addition, to Mr. Keserovic's statement that he would not have accepted the plea deal had he known the full ramifications of it, a slightly shorter sentence, as part of the plea deal, would have taken this conviction out of the aggravated felony (mandatory deportation) situation. It is not apparent to the Court that the state would not have gone along with a slightly shorter sentence (shorter by one day), to accomplish this.

⁷The Court does not agree with Mr. Keserovic that it is not possible for statements from the court or the state to negate trial counsel's erroneous advice. See Appellant's Brief, at 14 ("It is the burden of defense counsel to provide accurate advice under *Padilla*"). For instance, if trial counsel here had not provided any specific advice to Mr. Keserovic concerning the immigration consequences of his guilty plea but the court or the state had explicitly informed him on the record that entering his guilty plea under these circumstances would subject him to *mandatory* deportation, this would have been sufficient to adequately inform him of the consequences of his plea, in the Court's view.

In the Court's view, Mr. Keserovic's guilty plea cannot be said to have been made with sufficient knowledge of the consequences of the plea, if he was never advised, prior to entering the plea (when the law is clear), that a guilty plea under the circumstances would result in his mandatory deportation.

CONCLUSION

Accordingly, in view of the foregoing, the district court hereby reverses Judge Gardunia's summary dismissal of Mr. Keserovic's petition seeking post-conviction relief. The issue of prejudice has not been addressed by Judge Gardunia.⁸ This case, therefore, is hereby remanded to Judge Gardunia for further proceedings consistent with this decision. See *Padilla v. Kentucky*, 381 S.W.2d 322, 328-30 (Ky. Ct. App. 2012) (Analysis of prejudice prong in mandatory deportation circumstance and noting that "[a]ccepting the plea agreement rendered Padilla mandatorily deportable. If he had insisted on a trial, the Commonwealth would have had to prove his guilt beyond a reasonable doubt, and Padilla would have a chance of avoiding a conviction that subjected him to mandatory deportation. Moreover, had the immigration consequences of Padilla's plea been factored into the plea bargaining process, trial counsel may have obtained a plea agreement that would not have the consequence of mandatory deportation.") (citing *Padilla v. Kentucky*, ___ U.S. ___, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) ("[T]he threat of deportation may provide the defendant with a powerful

⁸"Whatever deficiency or prejudice existed as a result of Defendant's attorney's performance was cured prior to Defendant entering his plea . . ." Order Granting Summary Dismissal of Post-Conviction Motion Relief, at 4.

incentive to plead guilty to an offense that does not mandate that penalty in exchange for a dismissal of a charge that does.")).

IT IS SO ORDERED.

Dated this 14th day of January 2014.

A handwritten signature in black ink, appearing to read 'Michael McLaughlin', written over a horizontal line.

Michael McLaughlin
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to the Idaho Rules to each of the parties of record in this cause in envelopes addressed as follows:

ADA COUNTY PUBLIC DEFENDER
VIA INTERDEPARTMENTAL MAIL

ADA COUNTY PROSECUTOR
VIA INTERDEPARTMENTAL MAIL

HON. THERESA GARDUNIA
MAGISTRATE JUDGE
VIA INTERDEPARTMENTAL MAIL

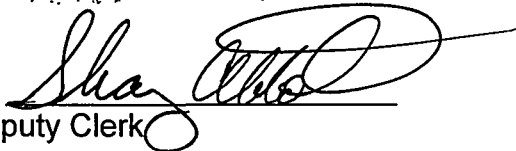
CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date:

January 14, 2014

By

Deputy Clerk

A handwritten signature in black ink, appearing to be "Sha [unclear]", written over a horizontal line.

FEB 24 2014

NOTICE IS HEREBY GIVEN THAT:

- 1) The above-named Respondent-Appellant, State of Idaho ("Appellant State"), by and through its attorneys, Shawna Dunn and James K. Dickinson, Special Attorneys General, appeal against the above-named Petitioner-Respondent to the Idaho Supreme Court from the Memorandum Decision and Order entered against the State in the above-entitled action on January 14, 2014, the Honorable Michael McLaughlin, District Judge, presiding.
- 2) The Appellant State has the right to appeal to the Idaho Supreme Court, insofar as the Memorandum Decision and Order described in paragraph one above is an appealable order pursuant to IAR 11(a)(2).
- 3) The issues the Appellant State intends to assert on appeal are:
 - a) Did the District Court err by reversing the Magistrate's summary dismissal of Mr. Keserovic's petition seeking post-conviction relief?
 - b) Did the District Court err in remanding the case for further proceedings?
 - c) Appellant State reserves the right to add additional issues on appeal and revise or restate the issues above.
- 4) The Appellant State requests the preparation of the entire reporter's standard transcript as defined in IAR 25(d), including all hearings and proceedings heard by the court after entrance of the guilty plea, as well as oral arguments on appeal to the district court.
- 5) The Appellant State requests the standard clerk's record pursuant to IAR 28(b)(2).
- 6) The undersigned certifies:
 - a) That copy of this Notice of Appeal has been served on the Court Reporter, Sue Wolf, 200 W. Front St. Boise, Idaho, and the estimated fee of \$100.00 has been paid to the Clerk of the Court.

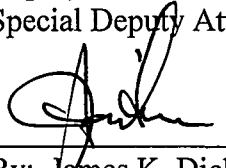
- b) That there is no filing fee since appellant is the State of Idaho, and this is a criminal appeal. (See IAR 23(a)(8)).
- c) That service has been made upon all parties required to be served pursuant to IAR 20.

DATED this 24th day of February 2014.

GREG H. BOWER
Ada County Prosecuting Attorney



By: Shawna Dunn
Deputy Ada County Prosecuting Attorney
Special Deputy Attorney General



By: James K. Dickinson
Deputy Ada County Prosecuting Attorney
Special Deputy Attorney General

CERTIFICATE OF SERVICE

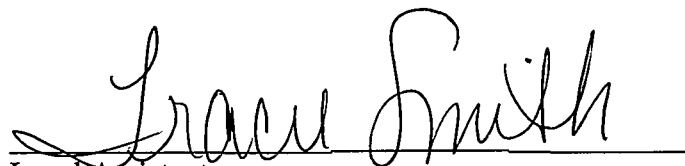
I **HEREBY CERTIFY** that on this 24th day of February 2014, I caused to be served, a true and correct copy of the foregoing Notice of Appeal upon the individual(s) named below in the manner noted:

Sue Wolf
200 W. Front St.
Boise, Idaho 83702

Kimberly Simmons
Ada County Public Defender
200 W. Front St. Rm 1107
Boise, Idaho 83702

State Appellate Public Defender
3050 N. Lake Harbor Lane
Suite 100
Boise, Idaho 83703

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class. - *SAPD*
- ☒ By depositing copies of the same in the Interdepartmental Mail. - *Wolf & Simmons*
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____


Legal Assistant



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 13, 2014

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

James K. Dickinson of the Ada County Prosecutor's Office, 200 W. Front St., Rm. 3191, Boise, Idaho 83702, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in *Haris Keserovic v. State of Idaho*, Ada County Case No. CV-PC-2012-17517.

The appointment is effective for the duration of the above-stated matter.

Any courtesies you can extend to Mr. Dickinson in his conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence G. Wasden', is written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General

LGW:blm



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 13, 2014

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

Shawna Dunn of the Ada County Prosecutor's Office, 200 W. Front St., Rm. 3191, Boise, Idaho 83702, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in *Haris Keserovic v. State of Idaho*, Ada County Case No. CV-PC-2012-17517.

The appointment is effective for the duration of the above-stated matter.

Any courtesies you can extend to Ms. Dunn in her conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden", written over a horizontal line.

LAWRENCE G. WASDEN
Attorney General

LGW:blm

FILED
A.M. 11:33 P.M.
MAR 06 2014
CHRISTOPHER D. RICH, Clerk
By CHRISTINE SWEET
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shawna Dunn
James K. Dickinson
Special Deputy Attorneys General
Deputy Ada County Prosecuting Attorneys
Idaho State Bar Nos. 5287, 2798
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC)	
)	
	)	DOCKET No.
Petitioner-Respondent,	)	District Court No. CV-PC-2012-17517
)	
vs.	)	AMENDED NOTICE OF APPEAL
)	
STATE OF IDAHO,)	
)	
Respondent-Appellant.)	
_____)	

**TO: THE ABOVE-NAMED PETITIONER - RESPONDENT, AND HIS ATTORNEY
OF RECORD:**

**HARIS KESEROVIC, BY AND THROUGH HIS COUNSEL, KIMBERLY
SIMMONS, ADA COUNTY PUBLIC DEFENDER, 200 W. FRONT
STREET ROOM 1107, BOISE, IDAHO 83702**

AND TO: THE CLERK OF THE ADA COUNTY COURT.

NOTICE IS HEREBY GIVEN THAT:

- 1) The above-named Respondent-Appellant, State of Idaho ("Appellant State"), by and through its attorneys, Shawna Dunn and James K. Dickinson, Special Attorneys General, appeal against the above-named Petitioner-Respondent to the Idaho Supreme Court from the Memorandum Decision and Order entered against the State in the above-entitled action on January 14, 2014, the Honorable Michael McLaughlin, District Judge, presiding.
- 2) The Appellant State has the right to appeal to the Idaho Supreme Court, insofar as the Memorandum Decision and Order described in paragraph one above is an appealable order pursuant to IAR 11(a)(2).
- 3) The issues the Appellant State intends to assert on appeal are:
 - a) Did the District Court err by reversing the Magistrate's summary dismissal of Mr. Keserovic's petition seeking post-conviction relief?
 - b) Did the District Court err in remanding the case for further proceedings?
 - c) Appellant State reserves the right to add additional issues on appeal and revise or restate the issues above.
- 4) The Appellant State requests the preparation of the entire reporter's standard transcript as defined in IAR 25(d), including all hearings and proceedings heard by the court after entrance of the guilty plea, as well as oral arguments on appeal to the district court.
- 5) The Appellant State requests the standard clerk's record pursuant to IAR 28(b)(2).
- 6) The Appellant State requests a transcript of the Oral Argument on Appeal from January 9, 2014 with Judge McLaughlin.
- 7) The undersigned certifies:
 - a) That copy of this Notice of Appeal has been served on the Court Reporter, Sue Wolf, 200 W. Front St. Boise, Idaho, and the estimated fee of \$100.00 has been paid to the Clerk of the Court.

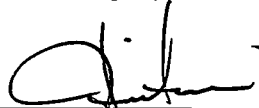
- b) That there is no filing fee since appellant is the State of Idaho, and this is a criminal appeal. (*See* IAR 23(a)(8)).
- c) That service has been made upon all parties required to be served pursuant to IAR 20.

DATED this 4th day of March 2014.

GREG H. BOWER
Ada County Prosecuting Attorney



By: Shawna Dunn
Deputy Ada County Prosecuting Attorney
Special Deputy Attorney General



By: James K. Dickinson
Deputy Ada County Prosecuting Attorney
Special Deputy Attorney General

CERTIFICATE OF SERVICE

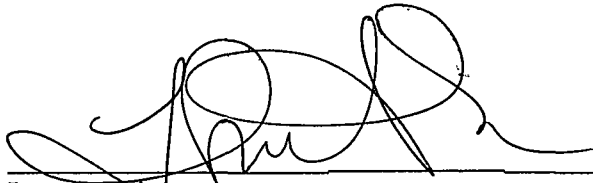
I **HEREBY CERTIFY** that on this 5th day of March 2014, I caused to be served, a true and correct copy of the foregoing Amended Notice of Appeal upon the individual(s) named below in the manner noted:

Sue Wolf
200 W. Front St.
Boise, Idaho 83702

Kimberly Simmons
Ada County Public Defender
200 W. Front St. Rm 1107
Boise, Idaho 83702

State Appellate Public Defender
3050 N. Lake Harbor Lane
Suite 100
Boise, Idaho 83703

- ☒ By depositing copies of the same in the United States mail, postage prepaid, first class. *8APD*
- ☒ By depositing copies of the same in the Interdepartmental Mail. *Simmons & Wolfe*
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____



Legal Assistant

NO. _____
A.M. 8:49 FILED P.M. _____

APR 21 2014

CHRISTOPHER D. RICH, Clerk
By **KELLE WEGENER**
DEPUTY

TO: CLERK OF THE COURT, IDAHO SUPREME COURT
451 WEST STATE STREET, BOISE, IDAHO
FAX (208) 334-2616

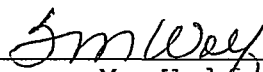
HARIS KESEROVIC,) Docket No. 41890-2014
)
Petitioner-Respondent,) Case No. CVPC-2012-0017517
)
vs.) NOTICE OF LODGING
)
STATE OF IDAHO,)
)
Respondent-Appellant.)
)

NOTICE OF TRANSCRIPT(S) LODGED

Notice is hereby given that on April 21, 2014,
I lodged one (1) transcript, totaling 21 pages, for
the following dates/proceedings:

01-09-14 Oral Argument on Appeal

for the above-referenced appeal with the District Court
Clerk for Ada County, in the Fourth Judicial District.



Susan M. Wolf
RPR, CSR No. 728

000251

RW

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Respondent,

vs.

STATE OF IDAHO,

Respondent-Appellant.

Supreme Court Case No. 41890

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

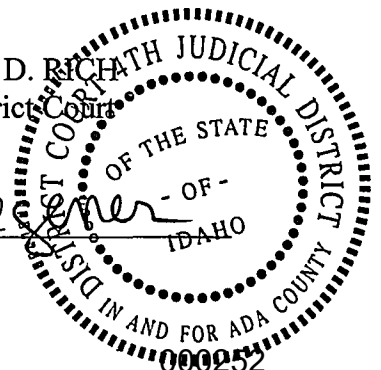
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Hearing held on June 26, 2012, Boise, Idaho, filed June 7, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 21st day of April, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By KW Lechner
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Respondent,

vs.

STATE OF IDAHO,

Respondent-Appellant.

Supreme Court Case No. 41890

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

SHAWNA DUNN

ATTORNEY FOR APPELLANT

BOISE, IDAHO

KIMBERLY SIMMONS

ATTORNEY FOR RESPONDENT

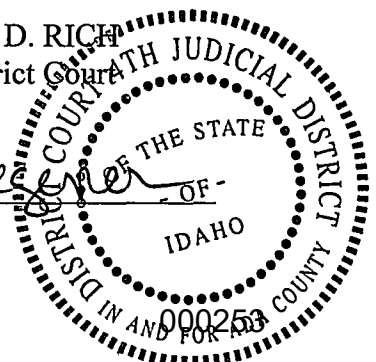
BOISE, IDAHO

Date of Service: APR 21 2014

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH
Clerk of the District Court

By K. Wesen
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HARIS KESEROVIC,

Petitioner-Respondent,

vs.

STATE OF IDAHO,

Respondent-Appellant.

Supreme Court Case No. 41890

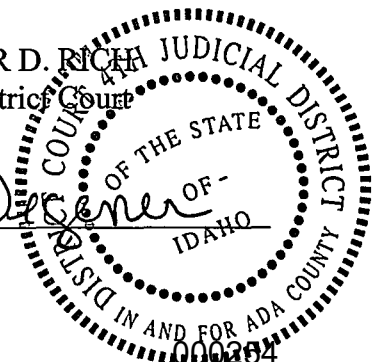
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 24th day of February, 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. Jensen
Deputy Clerk



CERTIFICATE TO RECORD